

United States
Circuit Court of Appeals

For the Ninth Circuit. 2

STANDARD SANITARY MANUFACTURING COMPANY, a
Corporation,

Appellant,

vs.

MOMSEN-DUNNEGAN-RYAN COMPANY, a Corporation,
PRATT-GILBERT HARDWARE COMPANY, a Corpo-
ration, UNION OIL COMPANY OF ARIZONA, a Corpo-
ration, PHOENIX PLUMBING AND HEATING COM-
PANY, a Copartnership Composed of LEO FRANCIS,
LYON FRANCIS and D. L. FRANCIS, Copartners, LEO
FRANCIS, LYON FRANCIS and D. L. FRANCIS, as
Individuals, WILLIAM L. HART, as Trustee in Bank-
ruptcy of the PHOENIX PLUMBING AND HEATING
COMPANY, a Copartnership Composed of LEO FRAN-
CIS, LYON FRANCIS and D. L. FRANCIS, Copartners,
Bankrupts, and CRANE COMPANY, a Corporation,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Arizona.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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THOMAS W. NEALON, Luhrs Tower, Phoenix,
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Attorney for Trustee. [3*]

In the District Court of the United States in and
for the District of Arizona.

No. B.-522—PHOENIX.

IN BANKRUPTCY.

MOMSEN-DUNNEGAN-RYAN COMPANY, a
Corporation, PRATT-GILBERT HARD-
WARE COMPANY, a Corporation, and
UNION OIL COMPANY OF ARIZONA, a
Corporation,

Petitioning Creditors,

vs.

PHOENIX PLUMBING AND HEARING COM-
PANY, a Co-partnership Composed of LEO

*Page-number appearing at the foot of page of original certified
Transcript of Record.

FRANCIS, LYON FRANCIS and D. L. FRANCIS, Co-partners, and D. L. FRANCIS, LEO FRANCIS and LYON FRANCIS, as Individuals,

(Alleged) Bankrupts.

CREDITORS' PETITION.

To the Honorable FRED C. JACOBS, Judge of the District Court of the United States for the District of Arizona:

The petition of Momsen-Dunnegan-Ryan Company, a corporation organized and existing under the laws of the State of Texas and authorized to do business in the State of Arizona, Pratt-Gilbert Hardware Company, a corporation organized and existing under the laws of the State of Arizona, and Union Oil Company of Arizona, a corporation organized and existing under the laws of the State of Arizona, respectfully represents:

That Leo Francis, Lyon Francis and D. L. Francis are partners doing a plumbing, heating, building and contracting business at 316 North Sixth Avenue in the City of Phoenix in said District under the firm name and style of Phoenix Plumbing and Heating Company, and as such have had their principal place of business for the greater portion of the six months next preceding the date of this petition at Phoenix in the County of Maricopa, State and District of Arizona. That if any of the hereinbefore mentioned partners in said business have withdrawn therefrom and the partnership dissolved thereby, the affairs of said partnership have not been finally settled. [4]

That Leo Francis owns an interest in Phoenix Plumbing and Heating Company and participated in each of the acts of bankruptcy hereinafter set up in this petition.

That Lyon Francis owns an interest in Phoenix Plumbing and Heating Company and participated in each of the acts of bankruptcy hereinafter set up in this petition.

That D. L. Francis owns an interest in Phoenix Plumbing and Heating Company and participated in each of the acts of bankruptcy hereinafter set up in this petition.

That Leo Francis, Lyon Francis and D. L. Francis have each had their domicile and residence and principal place of business for the greater portion of the six months next preceding the filing of this bankruptcy petition within the aforesaid District, and none of them is a wage-earner nor are any of them chiefly engaged in farming or tillage of the soil.

That said debtors and each of them owe debts in an amount in excess of One Thousand (\$1000.00) Dollars.

That your petitioners are creditors of said partnership and of said Leo Francis, Lyon Francis and D. L. Francis, having provable claims amounting in the aggregate to a sum in excess of Five Hundred (\$500.00) Dollars against said debtors and each of them, and that none of your petitioners own any securities whatsoever for the payment of said claims.

That the nature and amount of your petitioners' claims are as follows:

4 *Standard Sanitary Manufacturing Company*

Claim of Momsen-Dunnegan-Ryan Company, a corporation, in the amount of \$486.08, being an open account for goods, wares and merchandise sold and delivered to said Phoenix Plumbing and Heating Company and said Leo Francis, Lyon Francis and D. L. Francis, at their special instance and request, between the following dates, to wit, May 1, 1929, and June 4, 1929, on which there still remains due the sum of \$486.08. [5]

Claim of Pratt-Gilbert Hardware Company, a corporation, in the amount of \$73.31, on open account for goods, wares and merchandise sold and delivered by the said Pratt-Gilbert Hardware Company, a corporation, to the said Phoenix Plumbing and Heating Company and said Leo Francis, Lyon Francis and D. L. Francis, at the special instance and request of said Phoenix Plumbing and Heating Company and said Leo Francis, Lyon Francis and D. L. Francis, between the dates of May 1, 1929, and May 31, 1929, said dates being inclusive, on which there still remains due the sum of \$73.31.

Claim of Union Oil Company of Arizona, a corporation, in the amount of \$384.55, on open account for goods, wares and merchandise sold and delivered by the said Union Oil Company of Arizona, a corporation, to the said Phoenix Plumbing and Heating Company and said Leo Francis, Lyon Francis and D. L. Francis, at the special instance and request of said Phoenix Plumbing and Heating Company and said Leo Francis, Lyon Francis and D. L. Francis, between the following dates, to wit, August 1, 1928, and August 16, 1929, both dates be-

ing inclusive, on which there still remains due the sum of \$384.55.

Your petitioners further represent that the said Leo Francis, Lyon Francis and D. L. Francis, co-partners doing business under the firm name and style of Phoenix Plumbing and Heating Company, and Leo Francis, Lyon Francis and D. L. Francis, are insolvent and have been for a period of more than four months prior to the filing of this petition, and your petitioners further represent that while so insolvent and within four months next preceding the date of this petition, the said Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, and the said Leo Francis, Lyon Francis and D. L. Francis, as individuals, committed an act of bankruptcy in that they did heretofore, to wit, on the 6th day of June, 1929, transfer, set over and assign to Crane Company, a corporation, all their right, title and interest in and to their book accounts and claims of every nature against the following named persons [6] in the following named amounts, to wit:

- \$1,000.00 due from E. J. Bennett, Country Club Drive, Phoenix Ariz.,
- 800.00 due from Harry Tritle, No. Alvarado St., Phoenix,
- 500.00 due from O. P. Johnson, Verde Lane, Phoenix,
- 800.00 due from Frank B. Schwentker, Alvarado & Monte Vista, Phoenix,
- 500.00 due from Marena Teacherage Building, Marena, Arizona,

6 *Standard Sanitary Manufacturing Company*

500.00 due from Dan Campbell, W. Cambridge St., Phoenix,

225.00 due from James Barnes, 1300 Block W. Latham St., Phoenix,

400.00 due from O. R. Bell, 917 North 8th Street, Phoenix,

with intent to prefer said creditor over their other creditors, and they did at a time subsequent to June 1, 1929, transfer to the said Crane Company, a corporation, a portion of their property, to wit, money in the amount of One Thousand (\$1,000.00) Dollars, with intent to prefer said creditor over their other creditors.

That the said Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, and the said Leo Francis, Lyon Francis and D. L. Francis as individuals, did within the four months next preceding the date of this petition, commit an act of bankruptcy in that they did heretofore, to wit, on the 7th day of May, 1929, and while insolvent, transfer a portion of their property, to wit, all moneys due or to become due to them or either or any of them, on a contract for plumbing and heating on the Phoenix Junior College job in Phoenix, Arizona, to the Standard Sanitary Manufacturing Company, a corporation, of 447 East Jefferson Street, Phoenix, Arizona, and did then and there instruct the School Board of the school district in which said Phoenix Junior College is located and the Clerk of said Board to make payments of said moneys to the above-named Standard Sanitary Manufacturing Company as said sums might become due, there be-

ing a sum of money then due or to become due to the said Phoenix Plumbing and Heating Company and said Leo Francis, Lyon Francis and D. L. Francis, under said contract, with intent to prefer said creditor [7] over their other creditors.

That they, the said Phoenix Plumbing and Heating Company and said Leo Francis, Lyon Francis and D. L. Francis, did commit another act of bankruptcy in that they did on, to wit, May 7, 1929, assign to the said Standard Sanitary Manufacturing Company, a corporation, all moneys due or to become due to them or either or any of them, on a contract for plumbing and heating on a certain Library Building located in the city of Phoenix, State of Arizona, there being a large sum of money due or to become due to the said Phoenix Plumbing and Heating Company and said Leo Francis, Lyon Francis and D. L. Francis, upon a contract for the said work, with intent to prefer said creditor over their other creditors.

That the said Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners, and the said Leo Francis, Lyon Francis and D. L. Francis as individuals, did within the four months next preceding the date of this petition commit an act of bankruptcy in that they did heretofore, to wit, on the 7th day of May, 1929, and while insolvent, transfer a portion of their property, to wit, all moneys due or to become due to them or either or any of them, on a contract for plumbing on the Central Heating Plant job in Phoenix, Arizona, to the Standard Sanitary Manufacturing Company,

8 *Standard Sanitary Manufacturing Company*

a corporation, of 447 East Jefferson Street, Phoenix, Arizona, there being a large sum of money due or to become due to the said Phoenix Plumbing and Heating Company and said Leo Francis, Lyon Francis and D. L. Francis, upon a contract for the said work, with the intent to prefer said creditor over their other creditors.

That the instrument or instruments by which said properties were assigned and transferred were never recorded or registered, nor did the beneficiaries of any of the hereinbefore described attempted preferences take notorious, exclusive or continuous possession of the property so transferred, except as to the transfer [8] of money hereinbefore set forth as having been paid within four months of the date of the petition, nor did your petitioners receive any actual notice of such transfers or assignments prior to a date four months prior to the filing of this petition.

That they, said Phoenix Plumbing and Heating Company, and said Leo Francis, Lyon Francis and D. L. Francis, did commit a further act of bankruptcy in that they did heretofore at a date subsequent to June 1, 1929, and while insolvent, transfer a portion of their property, to wit, money in the sum of Thirteen Thousand (\$13,000.00) Dollars, to a certain creditor, to wit, Standard Sanitary Manufacturing Company, with intent to prefer said creditor over their other creditors.

That they, said Phoenix Plumbing and Heating Company, and said Leo Francis, Lyon Francis and D. L. Francis, did commit a further act of bankruptcy in that they did within four months next

preceding the date of this petition and while insolvent, transfer a portion of their property, to wit, money in the sum of \$44.50 to a certain creditor, to wit, Fred Noll Tire Service, with intent to prefer said creditor over their other creditors.

WHEREFORE, your petitioners pray that service of this petition with subpoena may be made upon said Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners, and D. L. Francis, Leo Francis and Lyon Francis as individuals, as provided in the Acts of Congress relating to bankruptcy, and that they and each of them may be adjudged by the Court to be bankrupts, both as partners and also as individuals, within the purview of said Acts.

MOMSEN-DUNNEGAN-RYAN COMPANY,

By ALICE M. BIRDSALL,

Its Attorney.

PRATT-GILBERT HARDWARE COMPANY.

By ALICE M. BIRDSALL,

Its Attorney.

UNION OIL COMPANY OF ARIZONA.

By ALICE M. BIRDSALL,

Its Attorney. [9]

ALICE M. BIRDSALL,

Attorney for Petitioners.

United States of America,

District of Arizona,

County of Maricopa,—ss.

Momsen-Dunnegan-Ryan Company, a corporation, Pratt-Gilbert Hardware Company, a Corpora-

10 *Standard Sanitary Manufacturing Company*

tion, and Union Oil Company of Arizona, a corporation, being three petitioners above named, by Alice M. Birdsall, their attorney, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by them are true.

ALICE M. BIRDSALL.

Subscribed and sworn to before me this 17th day of August, 1929.

[Seal]

HAZEL K. SAWYER,
Notary Public.

My commission expires April 5, 1933.

Filed Aug. 17, 1929. [10]

[Title of Court and Cause.]

ANSWER OF STANDARD SANITARY MANUFACTURING COMPANY, A CORPORATION.

Comes now the Standard Sanitary Manufacturing Company, a corporation, by its attorneys, Armstrong, Lewis & Kramer, and for answer to that petition filed in the above-entitled cause, praying for the adjudication in bankruptcy of the above-named alleged bankrupts, denies, admits and alleges, as follows:

I.

Admits that the Phoenix Plumbing and Heating Company is a co-partnership composed of Leo Francis, Lynn Francis and D. L. Francis, and that the said co-partnership has a usual place of business in Phoenix, Maricopa County, Arizona, and

that Phoenix, Maricopa County, Arizona, is the domicile of the members of said co-partnership and of the co-partnership as such.

II.

Admits that for a long time past the said Phoenix Plumbing and Heating Company, a co-partnership has been conducting business in the City of Phoenix, Maricopa County, Arizona.

III.

Denies that on or about the 7th day of May, 1929, or at [11] any time mentioned in the foregoing petition, that the Phoenix Plumbing and Heating Company, a co-partnership, was insolvent, and denies that on or about that date the Phoenix Plumbing and Heating Company assigned to or turned over to this creditor any sums of money then due or to become due on that certain job known as the Junior College job, being a certain plumbing and heating contract with the Trustees of the Phoenix Union High School District for the installation of a plumbing and heating plant in said Junior College, and in that respect this creditor alleges that on or about the 7th day of May, 1929, the Phoenix Plumbing and Heating Company, while solvent, did deliver to this creditor a certain paper which purported to assign to this creditor all rights the Phoenix Plumbing and Heating Company, a corporation, had in the said contract with the Trustees of the said District, but that the said Trustees did not accept said assignment, for the reason that the contract for the plumbing and heating job

especially provided that there should be no assignment under the said contract for any cause, and that this creditor received no moneys whatsoever from the said contract on May 7th, or at any time since.

That said purported assignment of moneys due on the Junior College job was in the usual form which this creditor demands from all contractors to whom it furnishes material for a contract job, and was given in the usual course of business as a security for material furnished to the said Phoenix Plumbing and Heating Company at a period long prior to the date of the purported assignment; that in truth and in fact this creditor received nothing by the said assignment either on May 7th or on any other date thereafter.

IV.

Answering further this creditor denies that it received [12] from the said Phoenix Plumbing and Heating Company, a co-partnership, an assignment of any sum or sums of money on the so-called library building job, being a contract with the Trustees of the Phoenix Union High School District for the installation of certain plumbing and heating apparatus in the library building of the Phoenix Union High School, but in that regard this creditor alleges that the Phoenix Plumbing and Heating Company, a co-partnership, and the Trustees of the Phoenix Union High School were forbidden by the terms of the said plumbing and heating contract either to make or accept an assignment of any moneys due on the said contract to any person at any time, and that therefore this

creditor received no moneys upon the said library building job by virtue of any alleged assignment.

That on or about the 7th day of May the Phoenix Plumbing and Heating Company, a co-partnership, did deliver to this creditor a writing which purported to assign certain moneys, but that said writing was delivered to this creditor in the usual course of business in the same manner as each and every contractor delivers an assignment as security for material furnished or to be furnished on contracts entered into by such contractors.

That on the 7th day of May, 1929, at the time the said writing was delivered by the Phoenix Plumbing and Heating Company, a co-partnership, it was a going, solvent concern.

V.

Answering further this creditor denies that it received from the said Phoenix Plumbing and Heating Company, a co-partnership, an assignment of any sum or sums of money on the so-called central heating plant job, being a contract with the trustees of the Phoenix Union High School District for the installation [13] of certain plumbing and heating apparatus in the central heating plant of the Phoenix Union High School, but in that regard this creditor alleges that the Phoenix Plumbing and Heating Company, a co-partnership, and the Trustees of the Phoenix Union High School were forbidden by the terms of the said plumbing and heating contract either to make or accept an assignment of any moneys due on the said contract to any person at any time, and that there-

14 *Standard Sanitary Manufacturing Company*

fore this creditor received no moneys upon the said central heating plant job by virtue of any alleged assignment.

That on or about the 7th day of May the Phoenix Plumbing and Heating Company, a co-partnership, did deliver to this creditor a writing which purported to assign certain moneys, but that said writing was delivered to this creditor in the usual course of business in the same manner as each and every contractor delivers an assignment as security for material furnished or to be furnished on contracts entered into by such contractors.

That on the 7th day of May, 1929, at the time the said writing was delivered by the Phoenix Plumbing and Heating Company, a co-partnership, it was a going, solvent concern.

VI.

Answering further this creditor denies that on or about the 5th day of June it received the sum of Thirteen Thousand (\$13,000) Dollars from the alleged bankrupts, as set forth in said petition, and in that regard this creditor alleges that on or about the 5th day of March, 1929, the Phoenix Plumbing and Heating Company, a co-partnership, delivered to this creditor an order upon the Lincoln Mortgage Company for the sum of Thirteen Thousand (\$13,000) Dollars, which said sum was then due or about to become due to the credit of the Phoenix [14] Plumbing and Heating Company; that at that time and place the said Thirteen Thousand (\$13,000) Dollars became and was the property of this creditor, and that

on or about the 5th day of June, 1929, the said Lincoln Mortgage Company, by virtue of said order dated on or about March 5, 1929, delivered to this creditor the sum of Thirteen Thousand (\$13,000) Dollars, but this creditor alleges that the Phoenix Plumbing and Heating Company had no authority or interest in said money at any date after the 5th day of March, 1929.

That at the time said order was delivered to this creditor on the 5th day of March, 1929, and at all times since, the said Phoenix Plumbing and Heating Company was a solvent, going concern, with assets greatly in excess of its liabilities.

VII.

Answering further this creditor alleges upon information and belief, and therefore states as a fact, that at the time the alleged assignments were made to the Crane Company and to the Noll Tire and Service Company, as set forth in the creditor's petition filed herein, the Phoenix Plumbing and Heating Company was a solvent, going concern, and that said assignments were nothing more nor less than payment to the Crane Company and the Noll Tire and Service Company for bills of goods sold to the Phoenix Plumbing and Heating Company prior to the date of the said alleged assignments.

VIII.

Answering further, this creditor states that at all times mentioned herein prior to the 7th day of May, 1929, the Phoenix Plumbing and Heating Company had received from this creditor mate-

16 *Standard Sanitary Manufacturing Company*

rials designed for each of the various jobs set forth herein, which materials had been incorporated in said jobs, and for which said materials the Phoenix Plumbing and Heating Company [15] owed this creditor various sums of money.

IX.

Answering further, this creditor shows that at no time prior to the date of the filing of said petition did the Phoenix Plumbing and Heating Company make an assignment to this creditor with the intention or for the purpose of hindering, delaying or defrauding any of the creditors of the Phoenix Plumbing and Heating Company, and that at all times mentioned herein the assets of the Phoenix Plumbing and Heating Company were in excess of all of the indebtedness of the Phoenix Plumbing and Heating Company, a co-partnership.

WHEREFORE, this creditor having fully answered said creditor's petition, prays that the said petition be dismissed as against the Phoenix Plumbing and Heating Company, a co-partnership.

By Its Attorneys,

ARMSTRONG, LEWIS & KRAMER,

Attorneys for Standard Sanitary Manufacturing Company, a Corporation.

United States of America,
District of Arizona,—ss.

Standard Sanitary Manufacturing Company, a corporation, being the creditor above named, by Frank J. Duffy, one of *these* attorneys, do hereby make solemn oath that the statements made in the

foregoing answer are true, except as to matters stated upon information and belief, and as to those he believes them to be true.

FRANK J. DUFFY.

Subscribed to and sworn before me on this 5th day of September, A. D. 1929.

[Seal] THOS. O. BISHOP,
Deputy Clerk, U. S. Dist. Court, District of
Arizona. [16]

Received copy of the within document this 5th day of September, 1929.

ALICE M. BIRDSALL,
By H. S.,
Attorney for Petitioning Creditors.

Filed Sept. 5, 1929. [17]

[Title of Court and Cause.]

ORDER OF REFERENCE TO SPECIAL
MASTER.

It appearing that Momsen-Dunnegan-Ryan Company, a corporation, Pratt-Gilbert Hardware Company, a corporation, and Union Oil Company of Arizona, a corporation, as petitioning creditors, have filed an involuntary petition herein, praying for the adjudication of the Phoenix Plumbing and Heating Company, a co-partnership, composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners; and D. L. Francis, Leo Francis and Lyon Francis, as individuals, as bankrupts, and that D. L. Francis and Lyon Francis, alleged bankrupts, and

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the Standard Sanitary Manufacturing Company, a corporation; a creditor of the alleged bankrupts, and Crane Company, a corporation, a creditor of the alleged bankrupts, have appeared and filed separate answers to said petition; and that Leo Francis, one of the alleged bankrupts, for himself and the Phoenix Plumbing and Heating Company, has filed an admission of willingness to be adjudged a bankrupt,—

NOW, on the motion of Alice M. Birdsall, attorney for said petitioning creditors,—

IT IS ORDERED, that the issues made by said petition and said respective answers be, and they hereby are, referred [18] to R. W. Smith, Esq., as Special Master under rule of court to ascertain and report the facts with his conclusions thereon.

Dated this 4th day of November, 1929.

F. C. JACOBS,
District Judge.

Filed Nov. 4, 1929. [19]

[Title of Court and Cause.]

REPORT OF SPECIAL MASTER ON PETITION FOR INVOLUNTARY ADJUDICATION.

I, the undersigned, Referee in Bankruptcy, to whom as Special Master, under rule of court, was referred the petition of Momsen-Dunnegan-Ryan Company, a corporation, Pratt-Gilbert Hardware Company, a corporation, and Union Oil Company

of Arizona, a corporation, praying for the adjudication of Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis, and D. L. Francis, co-partners, and Leo Francis, Lyon Francis, and D. L. Francis, as individuals, as bankrupts, and the separate answers of D. L. Francis and Lyon Francis, alleged bankrupts, and the Standard Sanitary Manufacturing Company, a corporation, a creditor of the alleged bankrupts and Crane Company, a corporation, a creditor of the alleged bankrupts, and the admission of willingness to be adjudicated bankrupt of Leo Francis for himself and the Phoenix Plumbing and Heating Company, to ascertain and report the facts with my conclusions thereon, do hereby report as follows: [20]

Upon due notice, the parties herein appeared before me with their witnesses and other evidence, said petitioning creditors appearing by Alice M. Birdsall; said alleged bankrupts D. L. Francis and Lyon Francis by E. O. Phlegar, Esq.; said admitted bankrupt Leo Francis by O. E. Schupp, Esq.; said Standard Sanitary Manufacturing Company, a corporation, by Frank J. Duffy, Esq., of the firm of Armstrong, Lewis and Kramer; and said Crane Company, a corporation, by Earl F. Drake, whereupon due hearing was had and arguments of counsel heard, upon due consideration whereof I do find the facts to be as follows:

1. That Momsen-Dunnegan-Ryan Company is a corporation, duly organized and existing under the

the Standard Sanitary Manufacturing Company, a corporation; a creditor of the alleged bankrupts, and Crane Company, a corporation, a creditor of the alleged bankrupts, have appeared and filed separate answers to said petition; and that Leo Francis, one of the alleged bankrupts, for himself and the Phoenix Plumbing and Heating Company, has filed an admission of willingness to be adjudged a bankrupt,—

NOW, on the motion of Alice M. Birdsall, attorney for said petitioning creditors,—

IT IS ORDERED, that the issues made by said petition and said respective answers be, and they hereby are, referred [18] to R. W. Smith, Esq., as Special Master under rule of court to ascertain and report the facts with his conclusions thereon.

Dated this 4th day of November, 1929.

F. C. JACOBS,
District Judge.

Filed Nov. 4, 1929. [19]

[Title of Court and Cause.]

REPORT OF SPECIAL MASTER ON PETITION FOR INVOLUNTARY ADJUDICATION.

I, the undersigned, Referee in Bankruptcy, to whom as Special Master, under rule of court, was referred the petition of Momsen-Dunnegan-Ryan Company, a corporation, Pratt-Gilbert Hardware Company, a corporation, and Union Oil Company

of Arizona, a corporation, praying for the adjudication of Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis, and D. L. Francis, co-partners, and Leo Francis, Lyon Francis, and D. L. Francis, as individuals, as bankrupts, and the separate answers of D. L. Francis and Lyon Francis, alleged bankrupts, and the Standard Sanitary Manufacturing Company, a corporation, a creditor of the alleged bankrupts and Crane Company, a corporation, a creditor of the alleged bankrupts, and the admission of willingness to be adjudicated bankrupt of Leo Francis for himself and the Phoenix Plumbing and Heating Company, to ascertain and report the facts with my conclusions thereon, do hereby report as follows: [20]

Upon due notice, the parties herein appeared before me with their witnesses and other evidence, said petitioning creditors appearing by Alice M. Birdsall; said alleged bankrupts D. L. Francis and Lyon Francis by E. O. Phlegar, Esq.; said admitted bankrupt Leo Francis by O. E. Schupp, Esq.; said Standard Sanitary Manufacturing Company, a corporation, by Frank J. Duffy, Esq., of the firm of Armstrong, Lewis and Kramer; and said Crane Company, a corporation, by Earl F. Drake, whereupon due hearing was had and arguments of counsel heard, upon due consideration whereof I do find the facts to be as follows:

1. That Momsen-Dunnegan-Ryan Company is a corporation, duly organized and existing under the

laws of the State of Texas and authorized to do business in the State of Arizona.

2. That Pratt-Gilbert Hardware Company is a corporation, duly organized and existing under the laws of the State of Arizona.

3. That the Union Oil Company of Arizona is a corporation, duly organized and existing under the laws of the State of Arizona.

4. That Leo Francis, Lyon Francis, and D. L. Francis are and were at all times mentioned in the petition herein, co-partners, doing business under the firm name and style of Phoenix Plumbing and Heating Company and as such have had their principal place of business at 316 North Six Avenue in the city of Phoenix, County of Maricopa, State and District of Arizona for more than six months next preceding the date of filing the petition herein, and that the affairs of said partnership have not been finally settled, and that said co-partnership and said individuals above named and each of them owe debts in the amount of \$1,000.00 and more, and that they are not and neither of them is a wage earner nor chiefly engaged in farming or the tillage of the soil. [21]

5. That said Phoenix Plumbing and Heating Company, a co-partnership, composed of Leo Francis, Lyon Francis and D. L. Francis was at the date of filing of the petition herein, now is, and has been for more than four months next preceding the date of filing of the petition herein, insolvent.

6. That said Leo Francis, Lyon Francis and D. L. Francis and each of them now are, were at

the time the petition herein was filed, and have been for more than four months next preceding the date of filing of the petition herein, insolvent.

7. That the petitioners herein are creditors of said alleged bankrupts and have provable claims which amount in the the aggregate to a sum in excess of Five Hundred (\$500.00) Dollars and that neither of said petitioners holds any securities whatsoever for the payment of their said claims.

8. That the nature and amount of said petitioners' claims are as follows:

(a) Claim of Momsen-Dunnegan-Ryan Company, a corporation, in the amount of \$486.08, being an open account for goods, wares and merchandise sold and delivered to said Phoenix Plumbing and Heating Company, a co-partnership, and said Leo Francis, Lyon Francis and D. L. Francis at their special instance and request between the dates of May 1st, 1929, and June 4th, 1929, on which there remains due the sum of \$486.08.

(b) Claim of Pratt-Gilbert Hardware Company, a corporation, in the amount of \$73.31 on open account for goods, wares and merchandise sold and delivered by said corporation creditor to the alleged bankrupts at their special instance and request between the dates of May 1st, 1929, and May 31st, 1929, both dates inclusive, on which there still remains due the sum of \$73.31. [22]

(c) Claim of Union Oil Company of Arizona, a corporation, in the amount of \$384.55 on open account for goods, wares and merchandise sold and delivered by said corporation creditor to said al-

leged bankrupts at their special instance and request between the dates of August 1st, 1928, and August 16th, 1929, both dates inclusive, on which there still remains due the sum of \$384.55.

9. That Leo Francis owns an interest in the Phoenix Plumbing and Heating Company and participated in each of the acts of bankruptcy hereinafter mentioned.

10. That Lyon Francis owns an interest in the Phoenix Plumbing and Heating Company and participated in each of the acts of bankruptcy hereinafter mentioned.

11. That D. L. Francis owns an interest in the Phoenix Plumbing and Heating Company and participated in each of the acts of bankruptcy hereinafter mentioned.

12. That a certificate of co-partnership was executed by Dee L. Francis, Leo Francis and Lyon Francis on the 27th day of December, 1928, which certificate was acknowledged before a Notary Public and filed in the office of the County Recorder of Maricopa County, State of Arizona, on December 28th, 1928, in Book 2 of partnership records at page 144 thereof.

13. That Crane Company, a corporation, and Standard Sanitary Manufacturing Company, a corporation, are and were at all times mentioned in the petition herein creditors of the Phoenix Plumbing and Heating Company, Leo Francis, Lyon Francis and D. L. Francis and each of them.

14. That on the 6th day of June, 1929, and within four months next preceding the date of the

petition herein, the said alleged bankrupts Phoenix Plumbing and Heating Company, a co-partnership, and Leo Francis, Lyon Francis and D. L. Francis, and each of them [23] did, while insolvent, assign, transfer and set over to Crane Company, a corporation, all their right, title and interest in and to their book accounts and claims of every nature against the following named persons in the following named amounts, to wit:

\$1,000.00 due from E. J. Bennett, Country Club Drive, Phoenix, Arizona,

\$ 800.00 due from Harry Trittle, North Alvarado Street, Phoenix, Arizona,

\$ 500.00 due from O. P. Johnson, Verde Lane, Phoenix, Arizona,

\$ 800.00 due from Frank B. Schwentker, Alvarado and Monte Vista, Phoenix, Arizona,

\$ 500.00 due from Marana Teacherage Building, Marana, Arizona,

\$ 500.00 due from Dan Campbell, West Cambridge Street, Phoenix, Arizona,

\$ 225.00 due from James Barnes, 1300 Block West Latham Street, Phoenix, Arizona,

\$ 400.00 due from O. R. Bell, 917 North Eighth Street, Phoenix, Arizona,

and aggregating the sum of \$4,725.00, with intent to prefer said creditors over their other creditors.

15. That within four months next preceding the date of the petition herein, to wit: on July 6th, 1929, the said alleged bankrupts above mentioned and each of them did, while insolvent, transfer to said Crane Company, a corporation, a por-

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tion of their property, to wit: Money in the sum of \$804.72, with intent to prefer said creditor over their other creditors.

16. That on or about June 10th, 1929, and within four months next preceding the filing of the petition herein, the said alleged bankrupts, Phoenix Plumbing and Heating Company, a co-partnership, and Leo Francis, Lyon Francis and D. L. Francis, did while insolvent, transfer and pay over to Standard Sanitary Manufacturing [24] Company, a corporation, a creditor, a portion of their property, to wit: Money in the sum of Thirteen Thousand (\$13,000.00) Dollars, with intent to prefer said creditor over their other creditors.

17. That Leo Francis, one of the alleged bankrupts above named filed herein on the 18th day of September, 1929, his admission of willingness to be adjudicated bankrupt accompanied by a schedule of his liabilities and assets.

And my Conclusions of Law are:

1. That this court has jurisdiction to adjudge the said Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, and Leo Francis, Lyon Francis and D. L. Francis, as individuals, bankrupt.

2. That the Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, and Leo Francis, Lyon Francis and D. L. Francis as individuals did on the 6th day of June, 1929, and within four months next preceding the date of fil-

ing the involuntary petition herein, commit an act of bankruptcy by assigning, transferring and setting over, while insolvent, to Crane Company, a corporation, all their right, title and interest in and to their book accounts and claims of every nature against the various persons named in the amounts set out in paragraph 14 of the findings of fact hereinbefore set out, aggregating the sum of Four Thousand Seven Hundred and Twenty-five (\$4,725.00) Dollars.

3. That the said alleged bankrupts and each of them did on the 6th day of July, 1929, and within four months next preceding the date of the filing of the involuntary petition herein, commit a further act of bankruptcy by transferring, while insolvent, to said Crane Company, a corporation, the sum of Eight Hundred [25] Four and Seventy-two One Hundredths (\$804.72) Dollars in money.

4. That the said alleged bankrupts and each of them did, on or about June 10th, 1929, and within four months next preceding the date of filing of the involuntary petition herein, commit a further act of bankruptcy by transferring and paying over, while insolvent, to Standard Sanitary Manufacturing Company, a corporation, the sum of Thirteen Thousand (\$13,000.00) Dollars in money.

5. That the said Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners, and Leo Francis, Lyon Francis and D. L. Francis as individuals are bankrupts within the

true intent and meaning of the Acts of Congress relating to bankruptcy.

Accordingly, I recommend that the said Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners, and Leo Francis, Lyon Francis and D. L. Francis as individuals and each of them be adjudicated bankrupt as of the date of the filing of the involuntary petition herein, to wit: The 17th day of August, 1929.

Dated this 18th day of February, 1930.

R. W. SMITH,
Special Master.

Papers and documents constituting the record are transmitted herewith as follows, viz.:

1. Creditors' petition.
2. Answer of alleged bankrupts. [26]
3. Appearance of Standard Sanitary Manufacturing Company.
4. Amended answer of alleged bankrupts.
5. Answer of Standard Sanitary Manufacturing Company.
6. Answer of Crane Company.
7. Admission of willingness to be adjudged bankrupt by Leo Francis.
8. Second amended answer of alleged bankrupts.
9. Motion of petitioning creditors to strike the answer of Standard Sanitary Manufacturing Company.
10. Motion of petitioning creditors to strike the answer of Crane Company.

11. Withdrawal of Richeson and Gehres as counsel for alleged bankrupts.
12. Amended answer of Standard Sanitary Manufacturing Company.
13. Stipulation permitting Crane Company to file amended answer.
14. Order permitting Crane Company to file amended answer.
15. Amended answer of Crane Company.
16. Order of reference.
17. Copy of schedules filed by Leo Francis.
18. Brief of petitioning creditors.
19. Memorandum of authorities of Standard Sanitary Manufacturing Company.
20. Reply brief of petitioning creditors.
21. Memorandum of authorities on costs by petitioning creditors.
22. Cost bill filed by petitioning creditors.
23. All exhibits filed.
24. Reporter's transcript of testimony taken—3 volumes.

Filed Feb. 18, 1930. [27]

[Title of Court and Cause.]

EXCEPTIONS OF STANDARD SANITARY
MANUFACTURING COMPANY TO THE
REPORT OF THE SPECIAL MASTER.

Comes now the Standard Sanitary Manufacturing Company, a corporation, a creditor of the Phoenix

Plumbing and Heating Company, alleged bankrupt herein, and makes exception to the Master's Report filed in the above-entitled cause on the 18th day of February, 1930, and more particularly excepts to the findings of fact contained in subdivision 16 of the Findings of Fact made by said Master in said report, which said finding of fact is as follows:

"16. That on or about June 10th, 1929, and within four months next preceding the filing of the petition herein, the said alleged bankrupts, Phoenix Plumbing and Heating Company, a co-partnership, and Leo Francis, Lyon Francis and D. L. Francis, did while insolvent, transfer and pay over to Standard Sanitary Manufacturing Company, a corporation, a creditor, a portion of their property, to wit: Money in the sum of Thirteen Thousand (\$13,000.00) Dollars with intent to prefer said creditor over their other creditors."

for the following reasons:

(1) That said finding of fact has no foundation in the evidence submitted, because it appears affirmatively in the report of the evidence and by Respondent's Exhibit "C" in evidence that Phoenix Plumbing and Heating Company did on the 5th day of March, 1929, assign and set over to the Standard Sanitary Manufacturing Company all its right, title and interest to the money owed the Phoenix Plumbing and Heating Company by the Lincoln Mortgage Company on a certain contract which the

Phoenix Plumbing and Heating Company then had with [28] the Lincoln Mortgage Company, and that said assignment contained an order to the Lincoln Mortgage Company to pay to the Standard Sanitary Manufacturing Company all of the moneys owing or to become due from the Lincoln Mortgage Company to the Standard Sanitary Manufacturing Company.

(See Respondent's Exhibit "C" and page 329, Vol. 2, Transcript of Evidence.)

(2) For the further reason that on the 5th day of March, 1929, the said Lincoln Mortgage Company accepted said assignment and order and was thereby bound to pay the money to the Standard Sanitary Manufacturing Company.

(3) For the further reason that it appears affirmatively by the evidence that the check which was paid by the Lincoln Mortgage Company for \$14,000.00 on or about the 6th day of June, 1929, was taken to the bank by representatives of the Standard Sanitary Manufacturing Company and representatives of the Phoenix Plumbing and Heating Company, and was there cashed and the \$13,000.00 paid to the Standard Sanitary Manufacturing Company, that being the first date upon which the said money held by the Lincoln Mortgage Company was released by reason of the completion of the work.

(Reporter's Transcript, Vol. 3, pages 391, 392.)

(4) Because it affirmatively appeared in the evidence by the testimony of Leo Francis, the owner of the Phoenix Plumbing and Heating Company,

that said transaction transferring all the right, title and interest of the Phoenix Plumbing and Heating Company to the money held by the Lincoln Mortgage Company took place on the 5th day of March, 1929, and that said assignment and order was accepted by the Lincoln Mortgage Company on the 5th day of March, 1929; and

It further appears from all of the evidence that the [29] Phoenix Plumbing and Heating Company was petitioned into bankruptcy on the 17th day of August, 1929, and that the said transaction by which all the right, title and interest of the Phoenix Plumbing and Heating Company in the Lincoln Mortgage Company money was transferred to the Standard Sanitary Manufacturing Company was in truth and in fact more than four months prior to the date of the filing of the petition in involuntary bankruptcy.

(5) Because it affirmatively appears upon all the evidence in the case, and upon the Master's Report, Findings of Fact and Conclusions of Law, that the Phoenix Plumbing and Heating Company was a solvent, going concern during the month of March, 1929.

Comes now the Standard Sanitary Manufacturing Company, a corporation, a creditor of the Phoenix Plumbing and Heating Company, alleged bankrupt herein, and excepts to the Conclusions of Law filed in the said Master's Report herein, and more particularly to the conclusion of law contained in subdivision 4 of the Conclusions of Law, which said conclusion is in the words and figures as follows:

“4. That the said alleged bankrupts and each of them did, on or about June 10th, 1929, and within four months next preceding the date of filing of the involuntary petition herein, commit a further act of bankruptcy by transferring and paying over, while insolvent, to Standard Sanitary Manufacturing Company, a corporation, the sum of Thirteen Thousand (\$13,000.00) Dollars in money.”

for the following reasons:

(1) That it affirmatively appears by the evidence in the case that the said \$13,000.00 was assigned to the Standard Sanitary Manufacturing Company by the Phoenix Plumbing and Heating Company and the Lincoln Mortgage accepted such assignment on the 5th day of March, 1929, and that thereafter [30] the Phoenix Plumbing and Heating Company had no control, interest or right in the said \$13,000.00 and that the same was not transferred and paid over by the Phoenix Plumbing and Heating Company while insolvent on or about the 10th day of June, 1929.

(2) Because it affirmatively appears by the testimony of D. L. Francis (Reporter's Transcript, Vol. 2, page 329) and by the evidence of Fryberger (Reporter's Transcript, Vol. 3, pages 391, 392) and by Respondent's Exhibit "C" in evidence, that full and complete title to the said \$13,000.00 passed to the Standard Sanitary Manufacturing Company on the 5th day of March, 1929, and that there does not appear in the evidence, findings of fact or conclu-

sions of law any proof that the Phoenix Plumbing and Heating Company was not a solvent, going concern on the 5th day of March, 1929.

Comes now the Standard Sanitary Manufacturing Company, and excepts to the report of the Master filed in the above-entitled cause, and particularly to that portion of the said report which is contained in subdivision 5 of the Findings of Fact, which is in words and figures as follows:

“5. That said Phoenix Plumbing and Heating Company, a co-partnership, composed of Leo Francis, Lyon Francis and D. L. Francis was at the date of filing of the petition herein, now is, and has been for more than four months next preceding the date of filing of the petition herein, insolvent.”

for the reason:

(1) That nowhere in the evidence upon which the said Master's Report, Findings of Fact and Conclusions of Law are based does there appear any proof of insolvency prior to the 20th day of July, 1929, but that in truth and in fact the evidence contained in the Reporter's Transcript shows conclusively [31] that at all times up to and including the 22d day of June, 1929, the Phoenix Plumbing and Heating Company was a solvent, going concern and was so treated by all of its creditors, including the petitioning creditors herein, and that upon all the evidence the finding of insolvency should have been the 20th day of July, 1929.

WHEREFORE, your petitioner, Standard Sanitary Manufacturing Company, respectfully prays that the report, Findings of Fact and Conclusions of Law filed by the Master in the above-entitled cause be corrected so as to strike therefrom subdivisions 5 and 16 of the Findings of Fact and subdivision 4 of the Conclusions of Law of the said Master's report.

ARMSTRONG, LEWIS & KRAMER,
Attorneys for Standard Sanitary Manufacturing
Company, a Corporation.

Received copy of the within document this 6th
day of March, 1930.

FRED BLAIR TOWNSEND and
EARL F. DRAKE,

Attorneys for Crane Co.

E. O. PHELGAR,

Attorney for D. L. & Lyon Francis.

ALICE M. BIRDSALL,

Attorney for _____.

Per S. O'BRIEN.

R. W. SMITH,

Special Master.

In the District Court of the United States in and
for the District of Arizona.

No. B.-522—PHOENIX.

MOMSEN-DUNNEGAN-RYAN COMPANY, a
Corporation, PRATT-GILBERT HARD-
WARE COMPANY, a Corporation, and
UNION OIL COMPANY OF ARIZONA, a
Corporation,

Petitioning Creditors,

vs.

PHOENIX PLUMBING AND HEATING COM-
PANY, a Co-partnership Composed of LEO
FRANCIS, LYON FRANCIS, and D. L.
FRANCIS, Co-partners, and D. L. FRAN-
CIS, LEO FRANCIS and LYON FRAN-
CIS, as Individuals,

(Alleged) Bankrupts.

DECREE.

This cause having come on to be heard on the ex-
ceptions of D. L. Francis and Lyon Francis, alleged
bankrupts, and of the Standard Sanitary Manu-
facturing Company, a creditor, to the report of the
Special Master, on petition for involuntary adju-
dication, filed herein on the 18th day of February,
1930, and the same having been argued by counsel
on the 21st day of May, 1930, and submitted, and
by the court taken under advisement, and the court
having duly considered the same and being fully
advised in the premises,—

IT IS ORDERED, ADJUDGED AND DECREED, that said objections to said report of said Special Master, be overruled, [33] and that said report of said Special Master be approved and confirmed, and that costs of said Special Master taxed at \$992.75, be awarded against the Standard Sanitary Manufacturing Company, in favor of petitioning creditors, herein.

IT IS FURTHER ORDERED that petitioning creditors recover costs taxed at the sum of \$———, as costs of said alleged bankrupts, D. L. Francis and Lyon Francis, to be paid out of said bankrupt estate.

IT IS FURTHER ORDERED that the Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners, and D. L. Francis, Leo Francis, and Lyon Francis as individuals, be and they hereby are declared and adjudged bankrupts.

AND IT IS ORDERED that said matter be referred to Hon. R. W. Smith, one of the Referees in Bankruptcy of this Court to take such further proceedings therein as are required by the Acts of Congress relating to bankruptcy, and that the said bankrupts shall attend before said Referee on the 23d day of June, 1930, at Phoenix, and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said bankruptcy.

Dated this 10th day of June, 1930.

F. C. JACOBS,
District Judge.

36 *Standard Sanitary Manufacturing Company*

As provided in Rule 34, approved as to form this
2d day of June, 1930.

ARMSTRONG, LEWIS & KRAMER,
Attorneys for Standard Sanitary Mfg. Co.

As provided in Rule 34, approved as to form this
2 day of June, 1930.

E. O. PHLEGAR,
Attorney for D. L. and Lyon Francis.

Filed Jun. 10, 1930. [34]

[Title of Court and Cause.]

MEMORANDUM OF COSTS AND DISBURSE-
MENTS OF PETITIONING CREDITORS
ON HEARING BEFORE SPECIAL MAS-
TER.

DISBURSEMENTS.

Marshal's Fees	\$ 6.75
Clerk's Fees	
Reporter's Fees, 12 days, at \$10.00, \$120.00; Transcript, \$372.20	492.20
Exceptions overruled, (3) Standard San. Mfg. Co.	15.00
Exceptions overruled, D. L. & Lyon Fran- cis (13)	65.00
Examiner's Fees	700.00
Witness Fees: (All on Insolvency).....	
H. E. Green.....	\$2.00
Chas. J. Asche.....	2.00
C. B. Lane.....	2.00

Frank McNichol.....	2.00
Cliff Fryberger.....	2.00
Lee Fretz.....	2.00
Jerrie Lee (5 days).....	10.00
H. Fliedner.....	2.00
Dorothy Dorrel.....	2.00
	<hr/>
	26.00
Southwest Audit Company examination books and records, and report on assets and liabilities of bankrupt.....	200.00
	<hr/>
Total.....	\$1504.95

United States of America,
District of Arizona,—ss.

Alice M. Birdsall, being duly sworn, deposes and says: That she is the attorney for petitioning creditors in the above-entitled cause, and as such has knowledge of the facts relative to the above costs and disbursements. That the items in the above memorandum contained are correct; that the said disbursements have been necessarily [35] incurred in the said cause, and that the services charged therein have been actually and necessarily performed as therein stated.

ALICE M. BIRDSALL.

Subscribed and sworn to before me this 2d day
of June, A. D. 1930.

My commission expires Jan. 6, 1934.

SARA L. O'BRIEN,
Notary Public.

To Messrs. Armstrong, Lewis & Kramer, Attorneys for Standard Sanitary Manufacturing Company, and E. O. Phlegar, Attorney for D. L. and Lyon Francis.

You will please take notice that on Thursday, the 5th day of June, A. D. 1930, at the hour of 9:30 o'clock, A. M., I will apply to the Clerk of said court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said court, in such case made and provided.

ALICE M. BIRDSALL,
Attorney of Petitioning Creditors.

Service of within memorandum of costs and disbursements, and receipt of a copy thereof acknowledged, this 2d day of June, A. D. 1930.

ARMSTRONG, LEWIS & KRAMER,
Attorneys for Standard Sanitary Manufacturing Co., Objecting Creditor.

Service of within memorandum of costs and disbursements, and receipt of a copy thereof acknowledged, this 2 day of June, A. D. 1930.

E. O. PHLEGAR,
Attorney for D. L. and Lyon Francis.

Petitioning creditors' costs in hearing on opposition to adjudication in bankruptcy before Special Master in the sum of \$992.75 taxed and entered against Standard Sanitary Mfg. Co., this 11th day of June, 1930.

C. R. McFALL,
Clerk.
By J. LEE BAKER,
Chief Deputy.

Petitioning creditors' costs retaxed by order of court June 23, 1930, and entered as follows:

Crane Co.	260.75
Std. San. Mfg. Co.....	532.00
Bankrupt Est.	302.20
	<hr/>
	1094.95

Filed Jun. 9, 1930. [36]

[Title of Court and Cause.]

OBJECTION TO MEMORANDUM OF COSTS
AND DISBURSEMENTS OF PETITION-
ING CREDITORS ON DECREE ADJUDI-
CATING BANKRUPTCY.

Comes now Standard Sanitary Manufacturing Company by its attorneys, Armstrong, Lewis & Kramer, and objects to the memorandum of costs and disbursements filed in the above-entitled case by petitioning creditors on the following grounds:

1. That the item of \$120 for the reporter's fee for twelve days at \$10 per day is not correct, in that one-half of said amount has been heretofore paid by the Standard Sanitary Manufacturing Company to the reporter.

2. That the item of \$372 charged for the transcript is not a legitimate item of cost that can be taxed, for the reason that there was no stipulation entered into by and between the parties hereto that said \$372 should be an item of taxable costs, and

for the further reason that said reporter was not called by or with the consent of the objecting creditor Standard Sanitary Manufacturing Company.

3. That said transcript covers three sets of exceptions, one advanced by the alleged bankrupt, one by the Crane Company, an objecting creditor, and one [37] by Standard Sanitary Manufacturing Company, an objecting creditor, and that the portion of said transcript which had to do with the exceptions of Standard Sanitary Manufacturing Company is less than one-third of the total transcript.

4. That the item of \$65, exceptions overruled on behalf of D. L. and Lyon Francis, is not a properly chargeable cost against Standard Sanitary Manufacturing Company for the reason that said company was not in any way concerned with said exceptions.

5. That the item of \$700, examiner's fee, which was allowed by the Judge upon application of said examiner, is not a correct statement, for the reason that of the said amount of \$700 the Crane Company has already paid \$76, and the Standard Sanitary Manufacturing Company has paid \$116.43, making a total of \$192.43 heretofore paid on said item of \$700, as is shown by said examiner's report to this court.

6. That the item of \$200, being the fees and charges for services of the Southwest Audit Company in the examination of the books of Phoenix Plumbing & Heating Company, is not a taxable cost against the Standard Sanitary Manufacturing

Company for the reason that said audit was not authorized or agreed to by the Standard Sanitary Manufacturing Company, nor was there any notice served at any time upon the Standard Sanitary Manufacturing Company that said auditor was to be called. That in truth and in fact, the services of the auditor were a necessary part of the adjudication, and would have been had in any event, whether issues were raised on the petitioning creditors' petition in bankruptcy or not. [38]

7. That heretofore, on February 11, 1930, petitioning creditors filed a memorandum of costs and disbursements in this cause, which said memorandum of costs and disbursements was premature and not warranted by the rules of this court, in that they were not filed upon any judgment at law or in equity, as provided in Rule 35 of the Rules of Practice of the District Court of Arizona, and that said memorandum was prematurely filed for the further reason that it was expressly stipulated by and between the parties in the above-entitled cause that the taxing of costs in the proceedings would be deferred until final judgment was entered by the Judge of this court, and that the first legitimate memorandum of costs and disbursements is the memorandum filed June 2, 1930.

WHEREFORE, Standard Sanitary Manufacturing Company, objecting creditor in the above-entitled cause, objects to each of the items set forth in said memorandum of costs, and prays that the same may be stricken from the memorandum of

costs and disbursements of said petitioning creditors.

ARMSTRONG, LEWIS & KRAMER,
Attorneys for Objecting Creditor Standard Sanitary Manufacturing Company. [39]

[Title of Court and Cause.]

AFFIDAVIT OF FRANK J. DUFFY IN SUPPORT OF OBJECTIONS OF STANDARD SANITARY MANUFACTURING COMPANY TO THE MEMORANDUM OF COSTS AND DISBURSEMENTS OF PETITIONING CREDITORS.

United States of America,
District of Arizona,—ss.

Frank J. Duffy, being duly sworn, on his oath deposes and says:

That he is one of the attorneys of record for the objecting creditor Standard Sanitary Manufacturing Company in the above-entitled cause, and as such has knowledge of the facts herein stated:

1. That heretofore, by stipulation between counsel for the various parties in the above-entitled cause, the Standard Sanitary Manufacturing Company paid one-half of the reporter's fee at the rate of \$10 per day for twelve days, and that thereafter Standard Sanitary Manufacturing Company purchased a copy of the transcript of evidence in this case, for which copy the said company paid \$85.

That at no time or place was any stipulation made for the payment of \$372 for said transcript, nor was there any order or application for order served upon the Standard Sanitary Manufacturing Company or its attorneys for the reporter's transcript at a cost of \$372, and that said item of \$372 is not chargeable against Standard Sanitary Manufacturing [40] Company, for the reason that no notice whatsoever was given the Standard Sanitary Manufacturing Company of said transcript.

2. That the item of \$65, being \$5 per exception for thirteen exceptions overruled on behalf of D. L. and Lyon Francis, alleged bankrupt, was not in any shape or manner connected with the objections to the petition in involuntary bankruptcy contained in the answer of Standard Sanitary Manufacturing Company, and that the Standard Sanitary Manufacturing Company was not in any way concerned therewith at any time in the case.

3. That the examiner's fee in the sum of \$700 is not an amount paid by the petitioning creditors, for the reason that \$192.43 of said \$700 has been heretofore paid as follows: \$76 paid by the Crane Company and \$116.43 paid by the Standard Sanitary Manufacturing Company, making a total of \$192.43, which said payments are evidenced by the request of the master or examiner in the above-entitled cause in his petition for assessment of costs for the master's hearing and report.

4. That the charge of \$200 for the examination of the books of the Phoenix Plumbing & Heating Company by the Southwest Audit Company is not

44 *Standard Sanitary Manufacturing Company*

a proper charge, in that said audit was not ordered by the master or examiner as a prerequisite to said hearing; that no order, petition for order, or other request was served upon the Standard Sanitary Manufacturing Company for said audit, and that in truth and in fact, if said audit was at all necessary it was a part of the petitioning creditors' case upon the adjudication. That said audit and the testimony of the auditor was nothing more or less than the testimony of [41] an expert witness, and as such is not provided for under the statute providing for costs in this case.

5. That heretofore, on February 11, 1930, a purported memorandum of costs and disbursements was filed by the petitioning creditors herein, but said memorandum was premature in that it was expressly agreed and stipulated by and between the parties hereto, as is shown in Volume 3 of the Transcript of Evidence in this case at page 569 thereof, that the taxing of costs in this proceeding should be made by the court upon final adjudication, viz., the adjudication entered by the court on the 27th day of May, 1930, and that the respective rights of the parties were reserved until said adjudication.

FRANK J. DUFFY.

Subscribed and sworn to before me this 4th day of June, 1930.

AMY SWEEM,
Notary Public.

My commission expires May 29, 1932.

Received copy of the within document this 4 day
of June, 1930.

E. O. PHLEGAR,
Attorney for D. L. & Lyon Francis.
ALICE M. BIRDSALL,
Attorney for Petitioning Creditors.

Filed Jun. 4, 1930. [42]

[Title of Court and Cause.]

APPEAL FROM ORDER OF CLERK TAXING
COSTS AND DISBURSEMENTS OF PETI-
TIONING CREDITORS ON DECREE AD-
JUDICATING BANKRUPTCY.

Comes now Standard Sanitary Manufacturing Company by its attorneys, Armstrong, Lewis & Kramer, and appeals to the District Court of the United States from that order of the Clerk of said court dated June 11, 1930, and served upon this company on the 12th day of June, 1930, wherein and whereby the said Clerk taxed the costs and disbursements of the petitioning creditors against the Standard Sanitary Manufacturing Company in the sum of Nine Hundred Ninety-two and 75/100 Dollars (\$992.75).

This appeal is made from the items of said order hereinafter set forth:

1. The Standard Sanitary Manufacturing Company appeals from the order of the Clerk assessing the sum of \$394.80 as and for reporter's per diem and reporter's transcript, and from the Clerk's

order refusing to divide said sum of \$394.80 between Standard Sanitary Manufacturing Company, a corporation, and Crane Company, a corporation, both of which last-named corporations were parties to the issues raised in the above-entitled cause and heard before the Special Master, for the reason that said item should be divided between the two said corporations. [43]

2. Standard Sanitary Manufacturing Company appeals from the order of the Clerk taxing the sum of \$350 as the unpaid balance of the Master's fee fixed by this court in the above-entitled cause against this petitioner upon the ground that said sum of \$350 should be by said Clerk divided between Standard Sanitary Manufacturing Company and said Crane Company, as both of said companies were parties to the issues raised in the above-entitled cause and tried before the Special Master appointed by this court.

3. Standard Sanitary Manufacturing Company appeals from the order of the Clerk taxing the sum of \$200 against Standard Sanitary Manufacturing Company as and for fees and charges of Southwest Audit Company for services in the examination of the books and records of Phoenix Plumbing and Heating Company and report of the assets and liabilities shown therefrom, for the reason that the said charge of \$200 was not authorized by this Court or by the Master who heard the case, and

that the same is not taxable as costs within the meaning of the federal statutes.

Respectfully submitted,
STANDARD SANITARY MANUFACTURING COMPANY.
By ARMSTRONG, LEWIS & KRAMER,
Its Attorneys.

Received copy of the within document this 13th day of June, 1930.

ALICE M. BIRDSALL,
Attorney for Petitioning Creditors.
Recd. copy June 14, 1930.

E. O. PHLEGAR.
Filed Jun, 13, 1930. [44]

[Title of Court and Cause.]

April, 1929, Term—Saturday, August 17, 1929—
At Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT—AUGUST 17, 1929—
ORDER GRANTING PETITIONING
CREDITORS' PETITION, ETC.

Creditors' petition that the alleged bankrupts herein appear and answer said petition comes on regularly for hearing this date; Alice M. Birdsall appears for said petitioning creditors. Whereupon hearing is now had on said petition, and

IT IS ORDERED that said petition be, and the same is hereby, granted, and that subpoena to allege bankrupts do issue forthwith.

IT IS FURTHER ORDERED that the bond of Momsen-Dunnegan-Ryan Company, a corporation, one of said creditors, in the sum of One Thousand Dollars be, and it is hereby, approved.

Thereupon hearing on creditor's petition for the appointment of a Receiver herein is now had and

IT IS ORDERED that said petition be and the same is granted, and a Receiver hereby appointed, said order appearing in full as follows: [45]

Thursday, August 29, 1929.

MINUTES OF COURT—AUGUST 29, 1929—
ORDER EXTENDING TIME TO AND INCLUDING SEPTEMBER 20, 1929, IN WHICH TO FILE ANSWER.

On motion of O. E. Schupp, Esquire, counsel for alleged bankrupt, Leo Francis, IT IS ORDERED that the time within which Leo Francis, a member of the co-partnership herein may answer, be and the same is hereby, extended to and including September 20, 1929.

October, 1929, Term—Saturday, October 19, 1929—
At Phoenix.

Honorable JEREMIAH NETERER, United States
District Judge, Specially Assigned, Presiding.

MINUTES OF COURT—OCTOBER 19, 1929—
ORDER ALLOWING STANDARD SANI-
TARY MANUFACTURING COMPANY TO
FILE AMENDED ANSWER.

On motion of F. J. Duffy, Esq., IT IS ORDERED
that the Standard Sanitary Manufacturing Com-
pany be, and it is hereby allowed, to file its amended
answer herein.

Monday, November 4, 1929.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT—NOVEMBER 4, 1929—
ORDER THAT MOTION OF PETITION-
ING CREDITORS TO STRIKE ANSWERS
OF CRANE COMPANY AND STANDARD
SANITARY MANUFACTURING COM-
PANY BE STRICKEN FROM CALENDAR.

On motion of Alice M. Birdsall, Esq., counsel for
the petitioning creditors, herein,

IT IS ORDERED that the motion of said peti-
tioning creditors to strike answers of Crane Com-
pany and Standard Sanitary Manufacturing Com-
pany, be, and the same are hereby, stricken from the
calendar.

Monday, February 24, 1930.

MINUTES OF COURT—FEBRUARY 24, 1930—
ORDER EXTENDING TIME TEN DAYS
TO FILE EXCEPTIONS TO MASTER'S
REPORT.

Petition of Special Master for allowance of fee comes on regularly for hearing this day. Frank T. Duffy, Esq., appears as counsel for the petitioning creditor, Standard Sanitary Manufacturing Company. No counsel appearing for the other parties herein,

IT IS ORDERED that the petition of Special Master for allowance of fee be submitted and by the Court taken under advisement.

On motion of Frank T. Duffy, Esq., IT IS ORDERED that the time within which to file exceptions to Master's Report be extended ten days from and after this date.

Subsequently the court having duly considered said petition, the following order is entered. [46]

Monday, March 31, 1930.

MINUTES OF COURT—MARCH 31, 1930—
ORDER ALLOWING PETITIONING
CREDITORS SEVEN DAYS TO FILE
REPLY BRIEF TO BANKRUPTS' EX-
CEPTIONS TO REPORT OF SPECIAL
MASTER.

Exception of D. L. Francis and Lyon Francis and exception of Standard Sanitary Manufacturing

Company to the report of Special Master come on regularly for hearing this day. No appearance is made for D. L. Francis and Lyon Francis; F. T. Duffy, Esquire, appears for Standard Sanitary Manufacturing Company; Alice Birdsall appears for the petitioning creditors.

On motion of counsel for petitioning creditors, IT IS ORDERED that said petitioning creditors be and they are hereby allowed seven days from and after this date within which to file reply brief to Bankrupts' exceptions to report of Special Master.

April, 1930, Term—Monday, April 7, 1930.

MINUTES OF COURT—APRIL 7, 1930—
ORDER EXTENDING TIME TO APRIL 14,
1930, FOR PETITIONING CREDITORS TO
FILE BRIEF TO EXCEPTIONS.

On motion of Alice M. Birdsall, counsel for the petitioning creditors,—

IT IS ORDERED that the time within which said petitioning creditors may file brief to exceptions upon objection to discharge be extended to April 14, 1930.

Tuesday, May 13, 1930.

MINUTES OF COURT—MAY 13, 1930—ORDER
THAT EXCEPTIONS TO REPORT OF
SPECIAL MASTER BE SET FOR HEAR-
ING MAY 21, 1930.

IT IS ORDERED that the exceptions to the report of Special Master herein and for review be set

for hearing, Wednesday, May 21, 1930, at the hour of eleven o'clock A. M.

Wednesday, May 21, 1930.

MINUTES OF COURT—MAY 21, 1930—ORDER
SUBMITTING EXCEPTIONS OF STAND-
DARD SANITARY MANUFACTURING
COMPANY, D. L. FRANCIS AND LYON
FRANCIS TO REPORT OF SPECIAL MAS-
TER ON PETITION FOR INVOLUNTARY
ADJUDICATION.

This cause comes on regularly for hearing to-day pursuant to exceptions of Standard Sanitary Manufacturing Company, D. L. Francis and Lyon Francis to report of Special Master on petition for involuntary adjudication, recommending that Phoenix Plumbing and Heating Company, a co-partnership, Leo Francis, Lyon Francis and D. L. Francis, as individuals, be adjudged bankrupt, heretofore filed herein. E. O. Phlegar, Esquire, appears for D. L. Francis and Lyon Francis; Frank Duffy, Esquire, appears for the Standard Sanitary Manufacturing Company, and Alice M. Birdsall appears for the petitioning creditors. [47]

Hearing is now had on said exceptions which are now duly argued by respective counsel.

And, thereupon, at the hour of 12:20 o'clock P. M., further hearing in this cause is ORDERED continued to the hour of 2:10 o'clock P. M. this date.

Subsequently, at the hour of 2:10 o'clock P. M.,

all counsel being present, further argument is had by respective counsel, and

IT IS ORDERED that said exceptions of Standard Sanitary Manufacturing Company, D. L. Francis and Lyon Francis to the report of the Special Master on petition for involuntary adjudication be submitted and by the Court taken under advisement.

Monday, May 26, 1930.

MINUTES OF COURT—MAY 26, 1930—ORDER
OVERRULING OBJECTIONS, APPROV-
ING AND CONFIRMING REPORT OF
SPECIAL MASTER AND AWARDING
COSTS.

Objections of D. L. Francis and Lyon Francis and Standard Sanitary Manufacturing Company to Special Master's report, having heretofore been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,—

IT IS ORDERED that said objections be overruled, and that said report of Special Master be approved and confirmed, and that costs of said Special Master be awarded against Standard Sanitary Manufacturing Company, to which ruling and order of the court an exception is allowed on behalf of the objectors, D. L. Francis, Lyon Francis and Standard Sanitary Manufacturing Company.

Tuesday, June 10, 1930.

MINUTES OF COURT—JUNE 10, 1930—
ORDER OF ADJUDICATION AND REFER-
ENCE.

The petition of Momsen-Dunnegan-Ryan Company, a corporation, Pratt-Gilbert Hardware Company, a corporation, and Union Oil Company of Arizona, a corporation, that Phoenix Plumbing & Heating Co., a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners, and D. L. Francis, Leo Francis and Lyon Francis, as [48] individuals, be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners, and D. L. Francis, Leo Francis and Lyon Francis as individuals are hereby declared and adjudged a bankrupt accordingly.

IT IS THEREFORE ORDERED, that upon the petition filed in this court by or against said bankrupt on the 17th day of August, A. D. 1929, said matter be referred to Hon. R. W. Smith, one of the Referees in Bankruptcy of this court, to take such further proceedings therein as are required by said Acts; and that the said bankrupts shall attend before said Referee on the 23d day of June, 1930, at Phoenix, and thenceforth shall submit to such orders as may be made by said Referee or by this court relating to said involuntary bankruptcy.

Monday, June 23, 1930.

MINUTES OF COURT—JUNE 23, 1930—ORDER TAXING COSTS OF PETITIONING CREDITORS.

Appeal of Standard Sanitary Manufacturing Company from order of Clerk taxing costs herein come on regularly for hearing this day. Alice M. Birdsall is present for the petitioning creditors, Momsen-Dunnegan-Ryan Company, Pratt-Gilbert Company and Union Oil Company; Frank Duffy, Esquire, appears for Standard Sanitary Manufacturing Company.

Argument is now duly had by respective counsel, and

IT IS ORDERED that costs of petitioning creditors be taxed as follows:

Crane Company	\$ 260.75
Standard Sanitary Manufacturing Company	532.00
Bankruptcy Estate	302.20
	<hr/>
	\$1,094.95

Thursday, June 26, 1930.

MINUTES OF COURT—JUNE 26, 1930—ORDER ACCEPTING AND APPROVING BOND ON APPEAL.

IT IS ORDERED BY THE COURT that the bond on appeal, executed June 25, 1930, in the sum of One Thousand Five Hundred Dollars, with the United States *States* Fidelity and Guaranty Company of Baltimore, [49] Maryland, as surety

thereon, and filed in this case June 26, 1930, and the same is hereby accepted and approved.

March, 1930, Term—Wednesday, August 13, 1930—
At Prescott.

MINUTES OF COURT—AUGUST 13, 1930—ORDER EXTENDING TIME TO AND INCLUDING NOVEMBER 3, 1930, FOR STANDARD SANITARY MANUFACTURING COMPANY TO SETTLE STATEMENT OF EVIDENCE.

On motion of E. G. Monaghan, Esquire,—

IT IS ORDERED that the time of the Standard Sanitary Manufacturing Company within which to settle the statement of evidence herein, be extended to and including November 3, 1930.

October, 1930, Term—Monday, November 10, 1930—
At Phoenix.

MINUTES OF COURT—NOVEMBER 10, 1930—ORDER SETTING TIME TO NOVEMBER 17, 1930, FOR SETTLING STATEMENT OF EVIDENCE.

On motion of Thos. W. Nealon, Esq., attorney for the Trustee,—

IT IS ORDERED that statement of evidence herein be set for settlement Monday, November 17, 1930, at the hour of 10:00 o'clock A. M.

Monday, November 17, 1930.

MINUTES OF COURT—NOVEMBER 17, 1930—
ORDER EXTENDING TIME TO FEBRU-
ARY 15, 1931, FOR CREDITORS AND
TRUSTEES TO FILE SPECIFICATIONS
IN OPPOSITION TO DISCHARGE OF
BANKRUPTS.

Alice M. Birdsall, Esquire, appears for the peti-
tioning creditors. On motion of said counsel—

IT IS ORDERED that the time within which the
creditors and Trustee may file specifications in op-
position to discharge of the bankrupts be extended
to February 15, 1931.

Monday, November 17, 1930.

MINUTES OF COURT—NOVEMBER 17, 1930—
ORDER CONTINUING HEARING OF
STATEMENT OF EVIDENCE.

Frank J. Duffy, Esquire, appears for the Stan-
dard Sanitary Manufacturing Company, one of the
objecting creditors; Alice M. Birdsall, Esquire, ap-
pears for the petitioning creditors; Thomas W.
Nealon, Esquire, appears for the Trustee.

Statement of the evidence is now presented to the
Court and

IT IS ORDERED that this matter be continued
for further hearing. [50]

April, 1929, Term—Saturday, August 17, 1929—at
Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT—AUGUST 17, 1929—
ORDER APPOINTING RECEIVER.

In the matter of the petition of Momsen-Dunne-
gan-Ryan Company, it appearing to the Court that
it is absolutely necessary for the preservation of the
estate of said alleged bankrupt that a receiver be
forthwith appointed, without notice, to take charge
of, hold, manage and conduct the estate, property
and assets of said bankrupt, and it further appear-
ing that it is for the best interest of said estate that
said receiver be authorized to take immediate charge
of said estate and to continue the business as a going
concern pending the appointment of a trustee
herein.

IT IS THEREFORE ORDERED, ADJUDGED
AND DECREED, That Walter J. Thalheimer be
and he is hereby appointed receiver of all the assets
and property of each and every kind and character
of and belonging to said Phoenix Plumbing and
Heating Company, a co-partnership composed of Leo
Francis, Lyon Francis and D. L. Francis, co-part-
ners, and D. L. Francis, Leo Francis and Lyon
Francis as individuals, and said receiver is hereby
clothed with all power and authority of a receiver
in bankruptcy in similar cases, and that upon filing
a bond as such receiver in the usual form, in the

penal sum of Ten Thousand (\$10,000.00) Dollars, the sureties to be approved by the Clerk of this court, said Receiver immediately take possession of all of the assets of said alleged bankrupt.

IT IS FURTHER ORDERED, That said Receiver continue to conduct the business of said alleged bankrupt until the further order of this court, and said Receiver is hereby ordered and directed to immediately take an inventory of the property of said alleged bankrupt and to employ all necessary help for the administration of his trust.
[51]

April, 1929, Term—Saturday, August 17, 1929—at
Phoenix.

ORDER APPOINTING RECEIVER (CONTINUED).

IT IS FURTHER ORDERED, That said alleged bankrupt, his agents, employees, managers and attorneys, forthwith deliver to said Receiver all of said alleged bankrupt's property, assets and effects now in his or their possession or under his or their control, and that said alleged bankrupts and all persons, firms, corporations and creditors of said alleged bankrupts and each of their attorneys, agents and servants and all sheriffs, marshals and other officers, deputies and their employees hereby jointly and severally be restrained and enjoined from removing, transferring or otherwise interfering with the property, assets and effects of the above alleged bankrupts, and from prosecuting, executing or suing out in any court any process, attachment, re-

plevin or other writ for the purpose of taking possession, impounding or interfering with any property, assets or effects of the above-named alleged bankrupt, and from molesting, disturbing or interfering with said Receiver herein appointed in the discharge of his duties.

Dated this 17th day of August, 1929.

F. C. JACOBS,
Judge of the District Court of the United States
in and for the District of Arizona. [52]

October, 1929, Term—Thursday, October 31, 1929—
At Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT—OCTOBER 13, 1929—
ORDER PERMITTING AMENDMENT OF
ANSWER.

Pursuant to stipulation of the respective attorneys for the above-named petitioning creditors and Crane Co., a corporation, upon application of said Crane Co.,—

IT IS HEREBY ORDERED that said Crane Co. be given permisison to file an amended answer in said cause on or before the 31st day of October, 1929.

F. C. JACOBS,
District Judge.

Dated, Phoenix, Arizona, October 31st, 1929.
[53]

October, 1929, Term—Monday, November 4, 1929—
at Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT—NOVEMBER 4, 1929—
ORDER REFERRING ISSUES TO SPE-
CIAL MASTER.

It appearing that Momsen-Dunnegan-Ryan Com-
pany, a corporation, Pratt-Gilbert Hardware Com-
pany, a corporation and Union Oil Company of Ari-
zona, a corporation, as petitioning creditors have
filed an involuntary petition herein, praying for the
adjudication of the Phoenix Plumbing and Heating
Company, a co-partnership, composed of Leo Fran-
cis, Lyon Francis and D. L. Francis, co-partners;
and D. L. Francis, Leo Francis and Lyon Francis
as individuals, as bankrupts, and that D. L. Fran-
cis and Lyon Francis, alleged bankrupts, and the
Standard Sanitary Manufacturing Company, a cor-
poration, a creditor of the alleged bankrupts, and
Crane Company, a corporation, a creditor of the al-
leged bankrupts, have appeared and filed separate
answers to said petition; and that Leo Francis, one
of the alleged bankrupts, for himself and the Pho-
enix Plumbing and Heating Company, has filed an
admission of willingness to be adjudged a bank-
rupt,—

NOW, on the motion of Alice M. Birdsall, attor-
ney for said petitioning creditors,—

IT IS ORDERED, that the issues made by said
petition and said respective answers be, and they

hereby are, referred to R. W. Smith, Esq., as Special Master, under rule of court to ascertain and report the facts with his conclusions thereon.

Dated this 4th day of November, 1929.

F. C. JACOBS,
District Judge. [54]

October, 1929, Term—Monday, February 24, 1930—
at Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT—FEBRUARY 24, 1930—
ORDER FIXING AND ALLOWING COM-
PENSATION TO SPECIAL MASTER.

Upon reading the foregoing report and petition of the Special Master in said cause it appears to the Court that the services have been rendered by the said Master as therein reported, and that \$27.50 per day including rental expense of office and courtroom is a reasonable allowance therefor; wherefore,—

IT IS ORDERED that the sum of Seven Hundred and no/100 (\$700.00) Dollars be, and the same is hereby, fixed and allowed as compensation to said Special Master, R. W. Smith, for the services rendered and expenses incurred.

Dated this 24th day of February, 1930.

F. C. JACOBS,
Judge. [55]

April, 1930, Term—Tuesday, June 10, 1930—at
Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT—JUNE 10, 1930—DE-
CREE.

This cause having come on to be heard on the exceptions of D. L. Francis and Lyon Francis, alleged bankrupts, and of the Standard Sanitary Manufacturing Company, a creditor, to the report of the Special Master, on petition for involuntary adjudication, filed herein on the 18th day of February, 1930, and the same having been argued by counsel on the 21st day of May, 1930, and submitted, and by the court taken under advisement, and the court having duly considered the same and being fully advised in the premises,—

IT IS ORDERED, ADJUDGED AND DECREED that said objections to said report of said Special Master be overruled, and that said report of said Special Master be approved and confirmed, and that costs of said Special Master taxed at \$992.-75, be awarded against the Standard Sanitary Manufacturing Company, in favor of petitioning creditors herein.

IT IS FURTHER ORDERED, that petitioning creditors recover costs taxed at the sum of \$———, as costs of said alleged bankrupts, D. L. Francis and Lyon Francis, to be paid out of said bankrupt estate.

IT IS FURTHER ORDERED, that the Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners, and D. L. Francis, Leo Francis and Lyon Francis as individuals, be and they hereby are declared and adjudged bankrupts.

AND IT IS ORDERED, that said matter be referred to Hon. R. [56] W. Smith, one of the Referees in Bankruptcy of this court, to take such further proceedings therein as are required by the Acts of Congress relating to bankruptcy, and that the said bankrupts shall attend before said Referee on the 23d day of June, 1930, at Phoenix, and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said bankruptcy.

Dated this 10th day of June, 1930.

F. C. JACOBS,
District Judge. [57]

April, 1930, Term—Wednesday, June 25, 1930—at
Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT—JUNE 25, 1930—OR-
DER GRANTING AND ALLOWING PETI-
TION FOR APPEAL AND FIXING
AMOUNT OF BOND.

Frank Duffy, Esquire, appears for the objecting creditor Standard Sanitary Manufacturing Company, and presents petition for appeal, and hearing is now duly had on said petition, and

IT IS ORDERED that said petition for appeal be granted and that appeal be allowed, and that bond of said objecting creditor on appeal be fixed in the sum of One Thousand Five Hundred Dollars.
[58]

April, 1930, Term — Monday, June 30, 1930 — At
Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT — JUNE 30, 1930 — OR-
DER CONTINUING TIME TO JULY 15,
1930, FOR FILING STATEMENT OF EVI-
DENCE.

It appearing to the court that it is necessary to extend the time for filing statement of the evidence in the appeal filed in the above-entitled cause by the Standard Sanitary Manufacturing Company, a corporation,—

IT IS ORDERED that the time for filing statement of the evidence in the above-entitled cause be and the same hereby is extended to the 15th day of July, 1930.

Dated this 30th day of June, 1930.

F. C. JACOBS,
Judge. [59]

April, 1930, Term — Monday, July 14, 1930 — At
Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT — JULY 14, 1930 — OR-
DER EXTENDING TIME FOR FILING
STATEMENT OF EVIDENCE.

Upon the petition of the Standard Sanitary Manufacturing Company, a corporation, appellants in the above-entitled case, it appearing to the court that for good cause shown the time for filing the statement of evidence in said appeal should be extended,—

IT IS HEREBY ORDERED that the time for filing the Statement of Evidence on the appeal of the Standard Sanitary Manufacturing Company, a corporation, in the above cause be and it is hereby extended thirty days from the 15th day of July, 1930, and that the said appellant have to and including the 15th day of August, 1930, to file said statement of the evidence.

Dated this July 14, 1930.

F. C. JACOBS,
Judge. [60]

April, 1930, Term—Thursday, July 17, 1930—At
Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT — JULY 17, 1930 — OR-
DER FOR TRANSMISSION OF ORIG-
INAL EXHIBITS.

This matter coming on regularly to be heard this 17th day of July, 1930, and it appearing to the satisfaction of the Court that certain exhibits filed in the above-entitled cause at the hearing before the Special Master, are not capable of being copied, and that they should be transmitted to Appellate Court in their original forms for examination by such court,—

NOW, THEREFORE, IT IS HEREBY OR-
DERED, that petitioning creditors exhibits Num-
bers 5, 14 and 16, in evidence, may be transmitted in their original forms, with the transcript of record, to the United States Circuit Court of Appeals for the Ninth District, without the necessity of making copies thereof.

Done in open court, this 17th day of July, 1930.

F. C. JACOBS,
United States District Judge. [61]

April, 1930, Term—Thursday, August 14, 1930—At
Prescott.

MINUTES OF COURT—AUGUST 14, 1930—
ORDER SETTING TIME TO NOVEMBER
11, 1930, FOR SETTLEMENT OF STATE-
MENT OF EVIDENCE.

It appearing to the court that all of the parties hereto have agreed and stipulated that the statement of evidence filed herein, be set down for settlement before this court on the 11th day of November, 1930,—

IT IS HEREBY ORDERED that the statement of evidence filed in this court be set down for settlement on the 11th day of November, 1930.

Dated this 14th day of August, 1930.

F. C. JACOBS,
Judge. [62]

October, 1930, Term—Thursday, February 5, 1931
—At Phoenix.

MINUTES OF COURT—FEBRUARY 5, 1931—
ORDER EXTENDING TIME TO MAY 15,
1931, TO FILE SPECIFICATIONS IN OP-
POSITION TO DISCHARGE OF D. L.
FRANCIS.

It appearing to the court that an order and decree of adjudication in bankruptcy in the above-entitled matter was made and entered in this court on the 26th day of May, 1930, and that thereafter an appeal from said order and decree was taken by the

Standard Sanitary Manufacturing Company, a creditor of said bankrupt, which appeal is now pending and undetermined.

And it further appearing to the court that by reason of said appeal the petition for discharge of said bankrupt, D. L. Francis, cannot be considered by the court until after the determination of said appeal,—

IT IS THEREFORE ORDERED by the court that the time within which the trustee in bankruptcy, and the creditors of said bankrupt, who have heretofore entered their appearance in opposition to the discharge of said bankrupt, D. L. Francis, may file their specifications of objections to said discharge be, and the same is hereby extended to the 15th day of May, 1931.

Dated this 5th day of February, 1931.

F. C. JACOBS,
Judge. [63]

October, 1930, Term—Monday, February 16, 1931—
At Phoenix.

MINUTES OF COURT—FEBRUARY 16, 1931—
ORDER ALLOWING TIME TO JANUARY
15, 1931, TO FILE STATEMENT OF EVIDENCE.

Alice M. Birdsall, Esquire, appears on behalf of the petitioning creditors. Thomas W. Nealon, Esquire, is present on behalf of the Trustee. Frank J. Duffy, Esquire, appears on behalf of the objecting creditors and the appellant herein, and

IT IS ORDERED that the appellant herein, Standard Sanitary Manufacturing Company, be allowed to February 25, 1931, within which to file its statement of evidence. [64]

October, 1930, Term—Monday, March 16, 1931—At
Phoenix.

MINUTES OF COURT—MARCH 16, 1931—ORDER EXTENDING TIME TO AND INCLUDING MARCH 18, 1931, TO FILE STATEMENT OF EVIDENCE, ETC.

Petition of the objecting creditor, Standard Sanitary Manufacturing Company, to extend time within which to docket record in the Circuit Court of Appeals to April 15, 1931, comes on regularly for hearing this day. Frank J. Duffy, Esquire, is present on behalf of the Objecting Creditor, Standard Sanitary Manufacturing Company. Thomas W. Nealon, Esquire, is present on behalf of the Trustee. Alice M. Birdsall, Esquire, is present on behalf of the petitioning creditors.

Counsel for the petitioning creditors now files answer to petition of the objecting creditor, Standard Sanitary Manufacturing Company, to extend time within which to docket record in the Circuit Court of Appeals to April 15, 1931, and counsel for the Trustee files his objections to said petition.

Argument is now duly had by respective counsel, and

IT IS ORDERED that said petitioner be granted an extension of time to and including the 18th day

of March, 1931, within which to file statement of the evidence, and

IT IS FURTHER ORDERED that the time of said petitioner within which to file and docket record on appeal in the United States Circuit Court of Appeals be extended to and including the 21st day of March, 1931, upon the conditions set forth in the stipulation of the parties heretofore filed herein. [65]

October, 1930, Term—Monday, March 16, 1931—At
Phoenix.

MINUTES OF COURT—MARCH 16, 1931—ORDER EXTENDING TIME TO AND INCLUDING MARCH 18, 1931, FOR SETTLEMENT OF STATEMENT OF EVIDENCE.

It appearing to the court that a stipulation has heretofore been entered into by and between the parties hereto for the extension of the time for settling the statement of evidence in the above-entitled case to the 18th day of March, 1931,—

IT IS ORDERED that the time for settling the statement of evidence in the above-entitled case be extended to and including the 18th day of March, 1931.

Dated this 16th day of March, 1931.

F. C. JACOBS, [66]

October, 1930, Term—Saturday, March 21, 1931—
At Phoenix.

MINUTES OF COURT—MARCH 21, 1931—OR-
DER TRANSMITTING ORIGINAL EX-
HIBITS.

This matter coming on to be heard this 21st day of March, 1931, and it appearing to the satisfaction of the court that all of the parties in the above-entitled cause have consented to the application filed in the above-entitled case, and it further appearing to the satisfaction of the court that Petitioning Creditors' Exhibits 7, 14, 18, 19, 20 and 21 filed in the above-entitled case at the hearing thereof before the Special Master are incapable of being copied and that they should be transmitted to the Appellate Court in their original form for examination by such court,—

NOW, THEREFORE, IT IS HEREBY ORDERED that Petitioning Creditors' Exhibits 7, 14, 18, 19, 20 and 21 may be transmitted in their original forms with the transcript of record to the United States Circuit Court of Appeals for the Ninth Circuit without the necessity of making copies thereof.

Done in open court this 21st day of March, 1931.

F. C. JACOBS,
United States District Judge. [67]

(Contract in Evidence, Ex. No. 1, Petitioning Creditors.)

(Certified copy substituted by stipulation.)

B-522.

PETITIONERS' EXHIBIT No. 1.

In Evidence.

11-20-29.

PLUMBING CONTRACT.

THIS AGREEMENT made and entered into this the 5th day of September, 1928, by and between D. L. Francis, Leo Francis and Lyon Francis, all of Phoenix, Arizona, a co-partnership, doing business under the firm name of Phoenix Plumbing and Heating Company, hereinafter designated the Contractors, the first party, and Phoenix Union High School District, Maricopa County, Arizona, by its Board of Education, hereinafter designated the Owner, the second party, WITNESSETH:

That in consideration of the covenants and agreements herein contained to be and by them kept and performed, it is hereby agreed by and between the parties above named as follows, to-wit:

1. The Contractors, to the satisfaction and under the direction of the Owner and Fitzhugh and Byron, the Architects for the Owner, shall and will provide all the material and perform all the work to install the plumbing in the Junior College Building, in accordance with the drawings and specifications, prepared therefor by Fitzhugh & Byron, Archi-

pects, which drawings and specifications signed for identification by the parties hereto are hereby declared to be a part of this contract.

2. The Architects shall furnish to the contractors such further drawings or explanations as may be necessary to detail and illustrate the work to be done, and the contractors shall conform to the same as far as they may be consistent with the original drawings and specifications referred to and identified as provided in paragraph 1.

3. Should the Owner at any time during the progress of said work require any alterations in, deviations from, additions to, or omissions from the said contract, specifications or drawings, it shall have the right and power to make such change or changes, and the same shall in no way effect or make void [68] this contract, but the difference in the work omitted or added shall be deducted from or added to the amount of the contract. No work of any description shall be considered extra unless a separate estimate in writing of the same, before its commencement, shall have been submitted by the contractors to the Owner and Architects, and their signatures obtained thereto. Should any dispute arise respecting the true construction or meaning of the drawings or specifications, or respecting the true value of any work to be omitted or added, the same shall be decided by the architects in charge, and their decision shall be final and conclusive, subject to arbitration as provided in the General Conditions of the Specifications.

4. The work embraced in this agreement shall

be executed under the immediate charge of, and under the sole responsibility of said contractors until said work be fully and finally completed and delivered to and accepted by the Owner and its Architects and the contractors shall assume responsibility for any damage which may occur to the building or materials during the work of this contract, except that the owner will carry fire insurance as hereinafter provided. The said contractors shall be responsible for any and all damage to persons and property during the performance of said work occasioned by his own act or neglect or that of any of his employees. The said contractors shall hold the said Owner harmless and free from expense or loss of any and every nature which may result from injury or damage sustained by any person or persons or damage to any property of any and all kinds which may result from any claim or claims, suit or suits, of any and every nature, as a result of the said contractors carrying on the work herein provided for. The Contractors shall carry from the time of the beginning of their operations until the completion of the same, approved employer's liability insurance to cover all claims for [69] injuries to their employees engaged in said work.

5. The Owner shall have the said building insured after its walls and superstructure are started, and shall from time to time increase such insurance as the work progresses, and the said policy shall have a clause showing the contractors' rights to such portion of the insurance as their interest

may appear. The contractors shall assume all responsibility for materials on the ground.

6. Said contractors shall pay all workmen the wage scale prevailing in the community and shall in all respects, in the performance of the work of this contract, observe the laws of the said State, especially a certain statute, being Chapter 1, Title XIV, of the Arizona Civil Code, 1913, and shall protect and save harmless said Owner, its officers and agents, from liability or loss on account of any violation of any laws of Arizona in the performance of the work of this contract.

7. The contractors shall provide sufficient, safe and proper facilities at all times for the inspection of the work by the Architects. They shall within twenty-four hours after receiving written notice from the Architects to that effect, proceed to remove from the grounds or the building all materials condemned or rejected, whether worked or unworked, and to take down all portions of the work which the Architects shall by like written notice condemn or reject as unsound or improper, or as in any way failing to conform with the drawings and specifications.

8. Should the contractors refuse or neglect at any time to supply a sufficiency of properly skilled workmen, or of materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, [70] such refusal, neglect, or failure being ascertained by the Architects, the Owner shall be at lib-

erty after two days' written notice to the contractors, given through the Architects, to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the contractors under this contract; and in the case of the discontinuance of the employment of the contractors, they shall not remove any appliances or materials from the grounds or building, neither shall they be entitled to receive any further payment under this contract until the work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Owner in finishing the work such difference shall be paid by the Owner to the contractors; but if such expense shall exceed such unpaid balance, the contractors shall pay the owner the difference.

9. Should the contractors be obstructed or delayed during the prosecution of or completion of the work by the act, neglect, delay, or default of the owner or the architects, or by any damage which might happen by fire, lightning, earthquake, or cyclone, or by the abandonment of the work by the employees through no fault of the contractors, then the time herein fixed for the completion of the work, shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefor is presented to the Architects within forty-eight hours of the occurrence of such delay, and the duration of such extension shall be certified by the Architects and a copy thereof furnished the owner and the contractors. Until said

building is completed, the contractors shall work in co-operation with any other contractors, or other persons engaged in the proper furnishing of labor and materials, or the installation of any fixtures for or in the said building. [71]

10. The contractors agree that they will perform the work of this contract expeditiously as fast as the building is ready to receive it and will complete all work within 130 working days from date of this contract.

11. Upon the faithful performance by the contractors of all the conditions and requirements of this agreement, the owner hereby agrees and promises to pay to the said contractors, the sum of Eight Thousand, Four Hundred, Twenty-four and No/100 Dollars (\$8,424.00).

All payments to be made upon estimates and certificates of the Architects upon the first and fifteenth days of each month for seventy-five (75%) per cent of the amount of labor and material having entered into the building and materials having been delivered on the site since the preceding payment, the final payment of twenty-five (25%) per cent reserved from previous estimates or installment payments shall be made as soon after completion of the building as the contractors shall furnish satisfactory evidence that all claims against the building have been satisfied. The contractors shall promptly pay all sub-contractors, material men, *labors*, and other employees as often as payments are made to them by the owner, and shall as a condition of any such partial payments, if required, furnish to said owner satisfactory evidence

that all sub-contractors, material men, laborers, and other employees upon said building, have been fully paid up to such time and shall deliver said work free from any claims on account of such sub-contractors, material men, laborers or other employees, and in the event of their failing at any time to pay such claims, the owner may retain from all subsequent estimates and pay over to such sub-contractors, material men, laborers and other employees, such sums as may from time to time be due them respectively. No certificate given or payment made under this [72] contract, except the final certificate of final payment, shall be conclusive evidence of the performance of this contract either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper material. Nothing herein contained shall be construed as an undertaking on the part of the Owner to be responsible to any material men, laborers, or sub-contractors on account of any material furnished or labor performed upon said building in any amount whatsoever. Before final settlement is made, the contractors shall furnish satisfactory evidence to the owner that the work covered by this contract is free and clear from all claims for labor or material, and that no claim then exists for which liens could be enforced or filed if said building were owned by a private individual.

12. This Contract shall not be in force or effect until the contractors shall execute a bond for the faithful performance of this contract in the penal sum of Eight Thousand, Four Hundred, Twenty-

four and No/100 Dollars (\$8,424.00) with Surety Company satisfactory to the Owner.

13. It is covenanted and agreed between the parties hereto for themselves, their administrators, executors, successors and assigns, that this contract and all its terms and provisions shall be final and binding upon them and each and every one of them.

IN TESTIMONY WHEREOF, the said Contractors have hereunto affixed their signatures and the Owner has caused this agreement to be subscribed by its Board of Education, the day and year first herein above mentioned.

PHOENIX PLUMBING & HEATING CO.
CO.

LYON FRANCIS,
LEO FRANCIS,
D. FRANCIS,

Contractors.

PHOENIX UNION HIGH SCHOOL DISTRICT,

By BOARD OF EDUCATION,
President.

LOUIE GAGE DENNETT,
Clerk,
Trustee. [73]

BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, D. L. Francis, Leo Francis and Lyon Francis, as principals, and American Bonding Company of Baltimore organized and existing under the laws of Maryland duly authorized to do

business as a surety company and to become surety upon bonds in the State of Arizona, as surety herein, are held ad firmly bound unto Phoenix Union High School District, of Maricopa County, Arizona, in the penal sum of Eight Thousand, Four Hundred, Twenty-four and No/100 Dollars (\$8,424.00) gold coin of the United States of America, to be paid said School District, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seal and dated this 5th day of September, 1928.

THE CONDITION of this obligation is such that:

WHEREAS, under and by virtue of a certain agreement in writing entered into on the 5th day of September, 1928, by and between the above bounden principals, D. L. Francis, Leo Francis and Lyon Francis, and the said Phoenix Union High School District, whereby, in consideration of the payment to the above bounden principals of a certain sum of money, the said principals agree to provide all the materials and perform all the work mentioned in the specifications and shown upon the drawings prepared by Fitzhugh & Byron for the installation of a plumbing system, to the satisfaction and under the direction of said architects, in the Junior College Building for the said Phoenix Union High School District, excepting, however, that said work might deviate from said

plans and specifications and be subject to changes thereto in the manner provided in said contract, a [74] copy of which said contract is hereto attached and by reference made a part of this bond as though fully and completely written therein.

NOW, THEREFORE, if the above bounden D. L. Francis, Leo Francis and Lyon Francis, their heirs, executors, administrators, successors or assigns, or either of them, shall well and truly perform all of the agreements of the said contract to be performed upon their part in the manner and form and at the time stated and specified in said contract, then this obligation shall be void; otherwise to be and remain in full force and virtue.

PHOENIX PLUMBING & HEATING CO.

LYON FRANCIS,
LEO FRANCIS,
D. FRANCIS,

Principals.

AMERICAN BONDING COMPANY OF
BALTIMORE.

By KINGSBURY SMITH, (Seal)

Attorney-in-fact,
Surety.

I, J. W. Laur, of the State of Arizona, County of Maricopa, hereby certify that the above is a true and exact copy of the original contract between the Phoenix Plumbing and Heating Company and the Phoenix Union High School District.

J. W. LAUR.

Subscribed and sworn to before me, a Notary Public, of the State of Arizona, County of Mari-

copa, on this day, November 19, 1929, at Phoenix, Arizona.

P. S. BASSFORD,
Notary Public. [75]

B-522. Petitioner's Exhibit No. 1 In evidence.
11-20-29.

Endorsed on back of exhibit: Report of Special Master. Filed Feb. 18, 1930. C. R. McFall, Clerk. United States District Court for the District of Arizona. By H. F. Schlittler, Deputy Clerk. [76]

B.-522.

PETITIONERS' EXHIBIT No. 2.

In Evidence.

11-20-29.

NAME—D. Leo Francis.

KIND OF BUSINESS—Plumbing & Heating.

ADDRESS—316 North 6th Ave., Phoenix, Arizona.

PHOENIX PLUMBING & HEATING CO.

INDIVIDUAL OR PARTNERSHIP STATEMENT.

To the Com'l. Nat. Ban. BANK OF Phoenix, Ariz.

For the purpose of obtaining credit with you from time to time I herewith submit the following as being a fair and accurate statement of my financial condition on Oct. 15, 1927.

ASSETS.

Cash on hand and in bank	258.54
Notes Receivable	
(Give due dates and details of important items on reverse)	
Accounts Receivable	1056.00
(Give full details of important items on reverse)	
Salable Merchandise (How valued).....	3700.00
United States Government Securities.....	
(.....Horses @.....	
Live (.....Cattle @.....	
Stock (.....Sheep @.....	
(.....Hogs @.....	
Estimated Value Growing Crop.	
Acres Crop Yield Price Total	
<hr/>	
Total Quick Assets.....	5014.54
Real Estate (List on reverse)	
Machinery and Tools (Actual value) Inventory and office fixtures—3 Trucks..	2500.00
2-F C A Rs	
Other Stocks and Bonds (List on reverse)	
Other Assets (Describe)	
<hr/>	
Total	7514.54

LIABILITIES.

Notes Payable, to banks.....
(Give due dates and details on reverse)
Other Notes Payable
(Give due dates and details on reverse)
Open Accounts Payable
Chattel Mortgages on (Not legible).....
due192.. 2670.00
Other indebtedness
(Give full details on reverse)
Total Current Debts.. 2670.00

Mortgages or Liens on Real Estate, due
.....192....
Total Liabilities 2670.00
Net Worth 4844.54

Total 7514.54

Liability as endorser for others—\$———

Are any of above assets pledged to secure indebtedness? ——

Life Insurance carried—\$10000.00. Payable to—
Wife.

Fire Insurance on personal property—\$1000.00.

On buildings—\$———. Do you carry Employers
Liability Insurance? Yes.

Are any suits or litigation pending either for or
against firm? No. Details ——

Signed—D. LEO FRANCIS.

(Over) [78]

I have a statement dated April 2, 1928, signed by Leo Francis.

B.-522.

PETITIONERS' EXHIBIT No. 3.

In Evidence.

11-20-29.

NAME—Phoenix Plumbing & Heating Co.

KIND OF BUSINESS _____

ADDRESS—316 N. 6th Ave.

INDIVIDUAL OR PARTNERSHIP STATEMENT.

To the Commercial Natl. Bank of Phoenix, Arizona.

For the purpose of obtaining credit with you from time to time I herewith submit the following as being a fair and accurate statement of — financial condition on April 2, 1928.

ASSETS.

Cash on hand and in bank	1758.50
Notes Receivable	
(Give due dates and details of important items on reverse)	
Accounts Receivable	2878.20
(Give full details of important items on reverse)	
Salable Merchandise (How valued	8700.00
Contracts as attach list.....	19012.10
United States Government Securities.....	

(.....Horses @.....
 Live (.....Cattle @.....
 Stock (.....Sheep @.....
 (.....Hogs @.....

Estimated Value Growing Crop.

Acres Crop Yield Price Total

Total Quick Assets.....32348.80

Real Estate (List on reverse)

Machinery and Tools (Actual value)..... 1400.00

Other Stocks and Bonds (List on reverse).

Other Assets (Describe)

.....

Total33348.80

[79]

LIABILITIES.

Notes Payable, to banks..... 1350.00

(Give due dates and details on reverse)

Other Notes Payable

(Give due dates and details on reverse)

Open Accounts Payable 3970.00

Chattel Mortgages on..... 1701.00

due192....

Other indebtedness

(Give full details on reverse)

For Labor and Material to finish Contract

work14200.00

Total Current Debts.....21221.00

88 *Standard Sanitary Manufacturing Company*

Mortgages or Liens on Real Estate, due	
..... 192.....	
Total Liabilities	21221.00
Net worth	12127.80
	<hr/>
Total	33348.80

Liability as endorser for others—\$ ~~None~~.

Are any of above assets pledged to secure indebtedness? None.

Life Insurance carried—\$11500.00. Payable to—Parents.

Fire Insurance on Personal property—\$2000.00.

On Buildings—\$ None. Do you carry Employers' Liability Insurance? Yes.

Are any suits or litigation pending either for or against firm? None. Details ———.

Signed—LEO FRANCIS.

(Over) [80]

B.-522.

PETITIONERS' EXHIBIT No. 4.

In Evidence.

11-20-29.

IMPORTANT—Note if NAME, BUSINESS and ADDRESS correspond with your inquiry.

Rv.

PHOENIX PLUMBING & HEATING COMPANY (NOT INC.)

PHOENIX, ARIZONA,
Maricopa County,
316 N. 6th Ave.

Blbg. & Heating Contrs.

D. L. Francis, aged 34, married.

Lyon Francis, aged 23, married.

Leo Francis, aged 22, married.

(Y) Cond. 24200 August 18th, 1928.

RECORD.

This business was started a number of years ago by another; however, on October 1, 1927, Leo Francis succeeded to same and for a time he operated individually although the above are now given as owners. The Francis family came from Fort Smith, Ark., where they were identified with the same line, although for a time, Leo Francis was at Kanowa, Okla., where he was known as a solicitor.

STATEMENTS.

A statement as of October 1, 1927, furnished by Leo Francis over his signature, and showing him-

90 *Standard Sanitary Manufacturing Company*

self as the owners of the business included total assets of \$7,520, liabilities \$2,670, and surplus \$4,850.

A statement from actual inventory of May 31, 1928, signed Phoenix Plumbing & Heating by Paul E. Gehree, cashier is now furnished, same showing the above as partners and financial condition as follows:

ASSETS.	LIABILITIES.
Mdse. on hand .. 6,042.95	For Mdse. not due.... 7,195.30
Outstanding	Loans from bank 4,000
Accts. 2,642.78	Int. Cont. Payable.... 1,845.00
Notes Recv. 223.40	Cap. Investment Accts. 15,236.50
Cash on hand	
& Bk. 1,684.38	
Machy Fixts. etc. 2,244.75	
Deposits on plans	
& Bids 1,138	
Due on contracts. 14,300.73	
<hr/>	<hr/>
\$28,276.99	\$28,276.99

Insurance on merchandise—\$1,800. On machinery and fixtures—\$500. Annual rent—\$636. Annual sales (Estimated)—\$120,000.

GENERAL INFORMATION.

The present statement shows considerably increased assets in comparison with the one of October, 1927, however since latter date, a good business has been done and some progress is conceded. As noted, they have quite a large amount due on

contracts, as well as outstanding accounts and while total liabilities are large, they are not regarded as out of proportion to their total assets. The owners maintain good banking connections, carry a fair balance there usually, and have been extended accommodations at times. Affairs are capably managed, those interested are well regarded, they have done well as stated, having handled a number of large contracts since their business was established.

FIRE HAZARD: The building occupied is a one-story building, the front being of cement block while the rear is of frame [81] and *and* sheet iron. On one side and close is a brick residence, while on the other side and on a corner, is a two-story brick building. The lower floor is occupied by a grocery, bakery, and restaurant, while the second floor is used as a rooming-house.

TRADE REPORT

HC. ORDER OWE DUE. PAYS.

3500

Prompt

688

Discount

FIRE RECORD

None.

Y-8-18-28

(CCO.)

Bk CN

N. Q. to G 3

T. R. (24200-SSMCO-5495) [82]

[Title of Court and Cause.]

DEBTOR'S SCHEDULES.

LEO FRANCIS, doing business under the name and style of Phoenix Plumbing and Heating Company, at Phoenix, in the county of Maricopa, state of Arizona, in the Federal District of Arizona, Phoenix Division, respectfully represents:

That he has had his principal place of business at Phoenix, in Maricopa county, Arizona, for the greater portion of ——— years next immediately preceding the filing of the Creditors' Petition praying that he be adjudged a bankrupt;

That he has filed herein his Admission of Willingness to be adjudged a bankrupt;

That he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to Bankruptcy.

That the schedule hereto annexed, marked A (1, 2, 3, 4, 5), and verified by his oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain), the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B (1, 2, 3, 4, 5, 6), and verified by his oath, contains an accurate statement of all his property, both real and personal, and such further statements con-

cerning said property as are required by the provisions of said acts.

LEO FRANCIS,
Bankrupt.

O. E. SCHUPP,
Attorney for Bankrupt.

United States of America,
Federal District of Arizona,
County of Maricopa,—ss.

I, Leo Francis, doing business under the name and style of Phoenix Plumbing and Heating Company, one of the debtors mentioned and described in the above-entitled action, do hereby make solemn oath that the statements contained in the schedules hereto attached are true according to the best of my knowledge, information and belief.

[Seal]

LEO FRANCIS,
Bankrupt.

Subscribed and sworn to before me this 17th day of September, 1929.

[Seal]

O. E. SCHUPP.

My commission expires February 15, 1932. [83]

N. B.—“Debts” shall include any debt, demand or claim provable in bankruptcy. Sec. 1 [11]

N. B.—“Creditor” shall include anyone who owns a demand or claim provable in bankruptcy and may include his duly authorized agent, attorney or proxy. Sec. 1 [9]

SCHEDULE A.

STATEMENT OF ALL DEBTS OF BANKRUPT.

SCHEDULE A. (1)

Statement of all creditors who are to be paid in full or to whom priority is secured by law.

CLAIMS WHICH HAVE PRIORITY

	AMOUNT
Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated.) Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.	None.
[1.] Taxes and debts due and owing to the United States.	
Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated.) Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.	
[2.] Taxes due and owing to the state of..... or to any county, district or municipality thereof.	
Maricopa County and State of Arizona by Phoenix Plumbing & Heating Co.....	217 63
City of Phoenix, Arizona, by Phoenix Plumbing & Heating Co., \$99.92, by Leo Francis, \$5.36, Total.....	105 23

reference to Ledger or Voucher.— Names of Creditors.— Residence unknown, that fact to be stated.) Where contracted when contracted.— Name and consideration of the debt, and whether contracted as partner or independent contractor; and if so, with whom.

[3.] Wages due workmen, clerks or servants to an amount not exceeding \$300.00 each, earned within three months before filing this petition.

Earl Shipp, 6 days @ \$4.00 per day.....	24 00
Lyon Francis, 6 days @ \$10.00 per day.....	60 00
B. H. Purcell, Yuma, Arizona, 8½ da. @ \$10.00 per day	85 00

reference to Ledger or Voucher.— Names of Creditors.— Residence unknown, that fact to be stated.) Where contracted when contracted.— Name and consideration of the debt, and whether contracted as partner or independent contractor; and if so, with whom.

[4.] Other debts having priority by law.

None

Total.....491 91

LEO FRANCIS, Petitioner. [84]

Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule must be signed.)—Rule 14.

N. B.—“Debts” shall include any debt, demand or claim provable in bankruptcy. Sec. 1 [11]

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CLAIMS WHICH HAVE PRIORITY

AMOUNT

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated.) Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.	[1.] Taxes and debts due and owing to the United States.	None.
Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated.) Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.	[2.] Taxes due and owing to the state of..... or to any county, district or municipality thereof. Maricopa County and State of Arizona by Phoenix Plumbing & Heating Co..... City of Phoenix, Arizona, by Phoenix Plumbing & Heating Co., \$99.92, by Leo Francis, \$5.36, Total.....	217 63 105 28

reference to Ledger or Voucher.—Names of Creditors.—Residence unknown, (if fact to be stated.) Where and when contracted.—Name and consideration of the debt, and whether contracted as partner or joint contractor; and if so, with whom.

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Earl Shipp, 6 days @ \$4.00 per day.....	24 00
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B. H. Purcell, Yuma, Arizona, 8½ da. @ \$10.00 per day	85 00

reference to Ledger or Voucher.—Names of Creditors.—Residence unknown, (if fact to be stated.) Where and when contracted.—Name and consideration of the debt, and whether contracted as partner or joint contractor; and if so, with whom.

[4.] Other debts having priority by law.

None

Total.....491 91

LEO FRANCIS, Petitioner. [84]

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CLAIMS WHICH HAVE PRIORITY

	<u>AMOUNT</u>
Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated.) Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.	None.
[1.] Taxes and debts due and owing to the United States.	
Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated.) Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.	None.
[2.] Taxes due and owing to the state of..... or to any county, district or municipality thereof.	
Maricopa County and State of Arizona by Phoenix Plumbing & Heating Co.....	217 63
City of Phoenix, Arizona, by Phoenix Plumbing & Heating Co., \$99.92, by Leo Francis, \$5.36, Total.....	105 28

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated.) Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[3.] Wages due workmen, clerks or servants to an amount not exceeding \$300.00 each, earned within three months before filing this petition.

Earl Shipp, 6 days @ \$4.00 per day.....	24 00
Lyon Francis, 6 days @ \$10.00 per day.....	60 00
B. H. Purcell, Yuma, Arizona, 8½ da. @ \$10.00 per day	85 00

Reference to Ledger or Voucher.—Names of Creditors.—Residence (if unknown, that fact to be stated.) Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[4.] Other debts having priority by law.

None

Total.....491 91

LEO FRANCIS, Petitioner. [84]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

SCHEDULE A. (2)

CREDITORS HOLDING SECURITIES.

(N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Acts of Congress relating to Bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.)

	AMOUNT OF DEBTS
Reference to Ledger or Voucher—Names of creditors.—Residence (if unknown, that fact must be stated).—Description of securities.—When and where debts were contracted. Value of securities.	
Standard Sanitary Manufacturing Company, Phoenix, Arizona, estimated at..	39,552 62
Partially secured by following assignments:	
Balance on contract with W. H. Brown for work on Hospital for the Insane; amount of contract \$7,270.05, credits \$4,080.00, balance assigned May 7, 1929	3,190.05
Contract with the City of Phoenix, Phoenix, Arizona, for construction of new City Hall; amount of contract \$23,233.85 with extras, credited \$14,526.00, balance assigned May 7, 1929...	8,707.85
This job was taken over Southern Surety Company, bondsman, for completion.	
Contract with Phoenix Union High School for Central Heating Plant; amount of contract and extras \$29,326.10, credited \$25,819.00, balance assigned May 7, 1929	3,507.10
This job was taken over by the Massachusetts Bonding Company for completion.	

Contract with Phoenix Union High School
for Junior College Building; amount of
contract and extras \$8,424.00, credited
\$6,318.00; balance assigned May 7,
19292,106.00

Job Uncompleted

Contract with Phoenix Union High School
for Library and Class Room building;
amount of contract and extras \$18,860.00,
credited \$9,450.00; balance assigned May
7, 19299,410.12

This job was taken over by American
Bonding Company for completion.

Unable to give actual or approximate
amounts received or that may be re-
ceived by the Standard Sanitary Mfg.
Co., on above assignments.

The Crane Company, Phoenix, Arizona.

The Crane Estimated at 5,551 33

Partially secured by the following assign-
ments:

Contract with O. R. Bell, Contractor, job
at 23 W. Monroe St., Phoenix, \$289.91
..... 289.91

Contract with O. R. Bell, job at 917 N. 8th
St., Phoenix400.00

Amount due from E. J. Bennett, Country
Club Drive, Phoenix, Arizona...1,000.00

Amount due from Harry Tritle No. Al-
varado St., Phoenix, Ariz.....800.00

Forward Total 45,103 95

(Full sets of schedule blanks must be
filed. If there are no items applicable
to any particular blanks, such fact should
be stated in said blank. Each schedule
sheet must be signed.)—Rule 14.

Forward.....45,103.95

Schedule A-2, page 2. Crane Co. Cont.

Amount due on contract with Green & Hall on Dan Campbell Residence; amount of contract and extras \$1597.55, credited \$900.00, balance due \$697.55, \$500.00 of which assigned to Crane Co. 500.00

Amount due from James Barnes, W. Latham St. 271.49

Contract with Green & Hall of Schwenker residence, \$2934.00, credited, \$1300.00, balance assigned 1,634.00

This job taken over by Massachusetts Bonding Co., for completion.

Contract with Hogan & Farmer on Marana Teachers College, Marana, Arizona, Contract \$1127.00 credited \$500.00, balance \$627.00, assigned..... 627.00

Unable to give actual or approximate amounts received or that may be received by the Crane Company on above assignments.

Total.....48,136.44

LEO FRANCIS. [86]

SUGGESTION

(In filing this blank, be careful to strictly follow form which requires a statement as to "nature and consideration of debts; and whether any judgment;" etc.)

SCHEDULE A. (3)

CREDITORS WHOSE CLAIMS ARE UNSECURED.

(N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

	AMOUNT
Reference to Ledger or Voucher.—	
Names of creditors.—Residence (if unknown, that fact must be stated).—	
When and where contracted.—	
Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and if so, with whom.	
Arizona Grocery Company, Phoenix, Arizona	2 25
Arizona Printers, Inc., Phoenix, Arizona..	28 25
Arizona Concrete Co., Phoenix, Arizona	181 87
Arizona Republican, Phoenix, Arizona....	64 00
Atlas Valve Co., 282 South St., Newark, N. J.....	337 56
Arizona Hardware Supply Co., Phoenix, Arizona	8 92
Armstrong Machine Works, Three Rivers, Mich.	79 92
Allison Steel Mfg. Co., Phoenix, Arizona..	317 42
Arizona Battery & Equipment Co., Phoenix, Arizona	322 73
Arizona Storage & Distributing Co., Phoenix, Arizona	15 00

A. & A. Motor Co., 301 N. Central Ave., Phoenix, Ariz.	24 63
Arizona Directory Co., 1240 S. Main St., Los Angeles, Calif.	10 00
Arizona Plumbing & Supply Co., Phoenix, Arizona	29 65
Aetna Life Insurance Company, Hartford, Conn.	12 94
Arizona Highway Department, Phoenix, Arizona	4 80
Bobrick Chemical Corp., 111-117 Gary St., Los Angeles, Cala.	26 56
A. C. Brauer Company, St. Louis, Mo....	5 55
The Builder & Contractor	24 00
Boston Store, Phoenix, Arizona.....	20 82
Capitol Foundry Co., Phoenix, Arizona...	8 20
Central Arizona Light and Power Co....	6 55
Commercial National Bank, Phoenix, Ari- zona	6,100 00
Credit Audit Co., 1931 Ry. Exchange Bldg., St. Louis, Mo.	5 55
Vernon Clark, Phoenix, Arizona	2 55
Edwards, Wildey & Dixon Co., Phoenix, Arizona	7 25
Five Points Blacksmith Shop, Phoenix, Ariz.	35 55
The Elliott Engineering Company, About..	2,680 00
Joe Francis, balance a/c money loaned, Phoenix, Arizona	60 00
Don Gilmore, Inc., Phoenix, Arizona.....	5 80
The Gazette Co., Inc., Phoenix, Ariz.....	15 00
Gila Valley Plumbing & Heating Co., Saf- ford, Ariz.	11 99

Glauber Bros. Mfg. Co., Cleveland, Ohio..	69 64
Hulse & Dick, Ford Dealers, Yuma, Arizona	6 00
J. D. Halstead Lumber Co., Phoenix, Arizona	116 20
E. R. Hill, Phoenix, Ariz.....	30 00
Heinz, Bowen & Harrington, Phoenix, Arizona	29 25
A. J. Keen, 316 N. 6th Ave., Phoenix, Arizona	30 00
Los Angeles Mfg. Co., Los Angeles, Calif..	596 80
Total	

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

LEO FRANCIS, Petitioner. [87]

Page 3 Continued.

Mathews Paint Co., Phoenix, Arizona....	73 10
O. B. Marston, Phoenix, Arizona.....	2 20
Milwaukee Valve Co., Milwaukee, Wisconsin	301 00
Momsen, Dunnegan & Ryan, Phoenix, Arizona	486 08
McArthur Bros., Phoenix, Arizona.....	32 30
J. H. McCarty, Phoenix, Arizona.....	11 00
Merchants Police Patrol, Phoenix, Arizona	2 00
M. & M. Welding Co., Phoenix, Arizona..	88 60
Mt. States Tel. & Tel. Co., Phoenix, Arizona	22 70
New Hale Electric Co., Phoenix, Arizona.	4 23
Fred Noll Tire Service, Phoenix, Arizona	44 50
Total.....	12,297 91

LEO FRANCIS,

Petitioner. [88]

O. E. Specialty Mfg. Co., Phoenix, Arizona	166 24
Oil Burning Equipment Co., Phoenix, Arizona	3,225 00
Powers Regulator Co., 2720 Greenview Ave., Chicago, Ill.....	131 25
Phoenix Arizona Club, Phoenix, Arizona.	15 00
Phoenix Auto Supply Co., Phoenix, Arizona	50 91
The Peoples Transfer Co., Phoenix, Arizona	19 56
Pratt Gilbert Hardware Co., Phoenix, Arizona	73 31
Postal Telegraph Co., Phoenix, Arizona. .	19 80

Public Service Brass Company	448 50
The Phoenician, Phoenix, Arizona	10 00
The Phoenix Roofing & Supply Co., Phoenix, Arizona	92 50
Pacific Construction Co., Phoenix, Arizona	17 00
W. M. Pepper, Phoenix, Arizona	531 95
Phoenix Tempe Stone Co., Phoenix, Arizona	34 00
Phoenix Blue Print Co., Phoenix, Arizona	75
Pace Hardware Co., Safford, Arizona...	35 10
Pure Food Cafe, Miami, Arizona	27 25
P. & M. Mfg. Co., 622 E. 4th St., Los Angeles, Calif.	9 48
Rio Grande Oil Company, Phoenix, Arizona	295 71
Chas. H. Richeson, Atty., Phoenix, Arizona	10 00
Southwestern Cement & Plaster Products Co.	18 00
Standard Insurance Agency, Phoenix, Arizona	272 67
Star Sheet Metal Works, Phoenix, Arizona	118 64
S. W. Sash & Door Co., Phoenix, Arizona	23 45
Southwestern Mfg. & Supply Co., Phoenix, Arizona	2,108 00
Sun Drug Co., Phoenix, Arizona	1 00
O. S. Stapley Co., Phoenix, Arizona...	1.95
E. F. Sanguinetti, Yuma, Arizona	10 67
Silas Plumbing Co., Yuma, Arizona	125 00
N. R. Tomsen	313 66
Talbot & Hubbard, Phoenix, Arizona	50

104 *Standard Sanitary Manufacturing Company*

Letis R. Templin, Phoenix, Arizona	5 00
The Desert Express, Yuma, Arizona	150 00
Union Oil Company, Phoenix, Arizona	384 55
Western Union Telegraph Co., Phoenix, Arizona	5 58
Welker & Son Transfer Co., Safford, Ari- zona	165 01
Yuma Central Auto Co., Yuma, Arizona..	6 60
Western Builders, Phoenix, Arizona	639 49
M. L. Vieux, Phoenix, Arizona	55 00
The Gazetteer Pub. & Printing Co., Den- ver, Colo.	15 00
Plaza Stone Cottages, Miami, Arizona....	12 25
Total	9,643 24

LEO FRANCIS,
Petitioner. [89]

SCHEDULE A. (4)

LIABILITIES ON NOTES OR BILLS DISCOUNTED WHICH OUGHT TO BE PAID BY THE DRAWERS, MAKERS, ACCEPTORS OR INDORSERS.

(N. B.—The dates of the notes or bills, and when due, with the names, residences and the business or occupation of the drawers, makers, acceptors or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.)

Reference to Ledger or Voucher.— Names of holders so far as known.— —Residence (if unknown, that fact must be stated). — Place where contracted.—Nature of liability, and whether same was contracted as partner or joint contractor or with any other person; and if so, with whom.	AMOUNT
None.	
TOTAL	

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

LEO FRANCIS, Petitioner. [90]

SCHEDULE A. (5)
 ACCOMMODATION PAPER.

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the bankrupt be liable as a drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. State particulars as to other commercial paper.)

Reference to Ledger or Voucher.— Names of holders.— Residence (if unknown, that fact must be stated).— Names and residences of persons accommodated.— Place where contract- ed.— Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.	AMOUNT
None.	
TOTAL.....	

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

LEO FRANCIS, Petitioner. [91]

OATH TO SCHEDULE A.

For the Federal District of Arizona, Phoenix, Division.

United States of America,
Federal District of Arizona,—ss.

In the Matter of Momsen-Dunnegan-Ryan Co., et al., Petitioners, vs. Phoenix Plumbing and Heating Company, Leo Francis, Doing Business Under the Name and Style of Phoenix Plumbing & Heating Company, et al., Alleged Bankrupts, in Bankruptcy No. B.-522—Phoenix.

On this — day of September, A. D. 1929, before me personally came Leo Francis, the person mentioned in and who subscribed to the foregoing Schedule, and who being by me first duly sworn, did declare the said Schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy.

LEO FRANCIS.

Subscribed and sworn to before me, this 17th day of September, 1929.

[Seal]

O. E. SCHUPP,
Notary Public.

My commission expires February 13, 1932.

(This Oath to Follow Schedule A-5.) [92]

SCHEDULE B. (2)
PERSONAL PROPERTY

	Dollars	Cents
A. Cash on hand.		None
B. Bills of exchange, promissory notes, or securities of any description (each to be set out separately).		None
C. Stock in trade in business of at of the value of	Plumbing & Heating, 316 N. 6th Ave., Phoenix, Ariz., about \$3,000.00: Consists of plumbing supplies of all kinds, pipe, lead, brass fixtures, connections, etc.	3,000 00
	Plumbing supplies at Yuma, purchased for	
D. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz:	Yuma High School Job but not used in construction of building, about	500 00
	Wearing apparel and ornaments	50 00
E. Books, prints, and pictures, viz:	Cash-book, account receivable book, Contract-book and time-book, no particular value.	
F. Horses, cows, sheep and other animals (with number of each), viz:	None.	

G. Carriages and other vehicles, viz:	1 Star Truck, \$50.00; 1 Chevrolet truck, \$200.00, (claimed exempt), and 1 Ford Truck, \$150.00	400 00
H. Farming stock and implements of husbandry, viz:	None.	
I. Shipping and shares in vessels, viz:	None.	
K. Machinery, fixtures, apparatus and tools used in business, with the place where each is situated, viz:	1-Toledo power drive thread cutting machine \$100.00; 1-Bench vice \$25.00; 1-36" Stilson wrench \$2.50; 1-36" Chain tong \$2.50; 1 pipe cutter from 2½ to 4" \$4.00; 1 claw-hammer \$0.35¢; 1-ball peon-hammer \$0.50; 1-single jack-hammer \$0.75; 1 monkey-wrench \$0.50; 4-rock points \$1.00; 2-cold chisels \$0.70¢; 1-14" Stilson \$1.00; 1-10" Stilson \$0.75¢; 2-18" Stilsons \$2.50; 2-24" Stilsons \$3.00; 1-trimo pipe cutter from ¼ to 2" \$2.50; 1-#1A Toledo stocks from 1 to 2" \$8.00; 1-#0 Toledo stocks from ⅜ to 1" \$5.00; 1-Toledo stocks from 2½ to 4", \$15.00; 1-pipe reaner \$0.00; 1-brace & bit \$0.75, 1-rod spud wrench \$1.00. Total.....	177 30
L. Patent, copyrights and trademarks, viz:	All claimed as exempt. L. none. M. none.	
M. Goods or personal property of any other description, with the place where each is situated, viz:		

Total..... 4,127 30

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

LEO FRANCIS, Petitioner. [93]

SCHEDULE B.

STATEMENT OF ALL PROPERTY OF BANKRUPT.

SCHEDULE B. (1)

REAL ESTATE.

Location and description of all real estate owned by debtor, or held by him. Incumbrances thereon, if any, and dates thereof. Statement of particulars relating thereto.	ESTIMATED VALUE
--	--------------------

None.

TOTAL.....

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

LEO FRANCIS, Petitioner. [94]

SCHEDULE B (3)
CHOSSES IN ACTION.

Dollars Cents

A. Debts due petitioner on open account. See separate sheets following..... \$3,724 24

B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds. None.

C. Policies of Insurance. Aetna Life Insurance Company, Hartford, Connecticut 00 00

D. Unliquidated claims of every nature, with their estimated value. See separate sheets following..... 35,657 79

E. Deposits of money in banking institutions and elsewhere. None.

TOTAL..... 39,383 03

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

LEO FRANCIS, Petitioner. [95]

Schedule B.-3-A.

ACCOUNTS RECEIVABLE.

A. Z. Root Beer Co., Phoenix Arizona	1.50
Arizona Landscape Gardners, Phoenix, Arizona	36.75
Mr. Atwater, c/o Phoenix Linen Supply Co., Phoenix, Arizona	19.90
Mrs. Anderson, 1760 E. Princeton St., Phoe- nix, Arizona	5.30
Mrs. Archer, 101 E. Coronado St., Phoenix, Arizona	18.00
Mrs. Abraham, 900 E. Moreland, Phoenix, Arizona	1.00
Arizona Scales Co., 306 N. Center St., Phoe- nix, Ariz.	31.00
Mrs. Antrim, 905 W. Palm Lane, Phoenix, Arizona	1.35
Arizona Garment Mfg. Co., Phoenix, Ari- zona.	35.75
Beers & Clever, Phoenix, Arizona	27.05
L. M. Byrd, 1325 W. Monroe St., Phoenix, Arizona	22.15
Fred Barrows, 1721 W. Jefferson St., Phoe- nix, Arizona	3.50
W. E. Brooks, 12 S. 18th Avenue, Phoenix, Arizona	4.95
B. A. Banks, 1226 E. Garfield St., Phoenix, Arizona	1.75
Booker T. Washington Hospital, 1342 E. Jefferson St., Phoenix	2.40
A. C. Baker, 1422 N. Central Ave., Phoenix	14.60

Bob Baker, 929 E. Coronado St., Phoenix, Arizona	5.15
Bob Brazee, 1043 E. Highland Ave., Phoe- nix, Arizona	9.35
Dr. Brown, 1106 W. Washington St., Phoe- nix, Ariz.	120.63
Mr. Balke, Balke Bldg., Phoenix, Arizona..	4.50
O. R. Bell, Phoenix, Arizona	2.00
Central Arizona Light & Power Co., Phoe- nix, Arizona	4.00
Ethel Clark, 1218 W. Monroe St.	15.35
Mr. Cousins, 751 E. Van Buren St., Phoenix, Arizona	12.00
Mr. Coulson, 1125 N. 2nd St., Phoenix, Ari- zona	1.75
J. J. Cox, 2230 N. 7th St., Phoenix, Ariz- zona	2.60
Mrs. E. S. Caldren, 1125 N. 2nd St., Phoe- nix, Arizona	1.50
C. C. Cragin, 517 W. McDowell Road, Phoe- nix, Arizona	3.20
Mrs. Carnes, 328 N. 4th Ave., Phoenix, Arizona	30.00
Otto Christopher, 1006 S. 3rd Ave., Phoenix, Arizona	2.65
Crane Co., Phoenix, Arizona	5.00
Jas. Coster, 375 N. 6th Avenue, Phoenix, Arizona	2.20
F. M. Corwin, 841 N. 7th Avenue, Phoenix, Arizona	2.25
Maricopa Tuberculosis Hospital, Phoenix, Arizona	4.95

Mr. Connell, 64 W. Holly St., Phoenix, Arizona	2.65
W. G. Dodson, 623 W. Adams St., Phoenix, Arizona	14.65
R. E. Davey, 702 E. Jefferson St., Phoenix, Arizona	3.75
Dean's Grocery, 703 N. 2nd St., Phoenix, Arizona	10.90
Mr. Dorris, Indian School Road & 9th Ave., Phoenix, Ariz.	4.00
Mrs. Dougherty, 900 N. 7th St., Phoenix, Arizona	3.00
Mrs. Mary Dunlap, 330 W. Latham St., Phoenix, Ariz.	2.55
H. S. Dorman, c/o Lincoln Mortgage Co., Phoenix, Arizona	4.85
W. W. Dunn, 1141 W. Lincoln St., Phoenix, Arizona	1.75
Mrs. Betty Dameron, 804 N. 5th Ave., Phoenix, Arizona	11.75
Dixie Hotel, 4th Avenue & Washington St., Phoenix, Ariz.	3.05
C. B. Evans, 1215 Woodlawn Avenue, Phoenix, Arizona	3.50
W. A. Evans, 3320 N. Central Avenue, Phoenix, Arizona	21.89
Mrs. T. L. Edens, 520 N. 9th Ave., Phoenix, Arizona	1.50
Mrs. Ellios, 340 W. Latham St., Phoenix, Arizona	9.20
Harold Foote, 2028 W. Monroe St., Phoenix, Arizona	1.50

Mrs. V. C. Ferguson, 4029 N. Vernon St., Phoenix, Arizona	5.00
J. Fundenburg, 318 N. 6th Avenue, Phoenix, Arizona	2.60
Five Points Barber Shop, Phoenix, Arizona	2.50
E. L. Freeland, 100 W. Roosevelt St., Phoe- nix, Arizona	5.15
First Baptist Church, 3rd Ave. & Monroe Sts., Phoenix	3.45
Mrs. J. Friedman, 1126 E. Willetta St., Phoenix, Ariz.	1.50
First Methodist Church, 2nd Ave. & Monroe Sts., Phoenix	4.30
Mr. Foster, c/o Barber Shop	1.95
Mrs. D. Francis, 88 Mitchell Drive, Phoe- nix, Ariz.	2.50

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Schedule B.-3-A.

Accounts Receivable—Continued.

Mr. Gold, 225 E. Washington St., Phoenix, Arizona	1.50
Mrs. Galbraith, 1410 N. 2nd St., Phoenix, Arizona	6.15
B. M. Guffith, 1595 E. McDowell, Phoenix, Arizona	5.90
Mr. Goyer, 337 N. 6th Ave., Phoenix, Ari- zona	6.75
Nick Gannis, 415 Oakland Street, Phoenix, Arizona	4.50
Fred Gardner, 916 S. 7th Ave., Phoenix, Arizona	5.83
Walter Godman, Phoenix, Arizona	29.16

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H. U. Gold, 1114 N. 2nd St., Phoenix, Arizona	12.00
H. Grimshaw, 390 N. 4th Avenue, Phoenix	2.25
Mr. Giveno, 634 N. 2nd Avenue, Phoenix, Arizona	3.40
Mrs. A. E. Holmer, 2005 W. Adams St., Phoenix, Ariz.	19.75
Mr. Henderson, 801 N. 10th Avenue, Phoenix, Ariz.	3.00
Marshall Humphrey, 1021 E. Willetta St., Phoenix, Ariz.	9.05
Miss Haul, c/o Lincoln Mortgage Co., Phoenix, Arizona	3.85
Samuel Haldeman, 15 W. Washington St., Phoenix, Ariz.	6.35
Hollywood Service Station, 902 W. Van Buren St., Phoenix	27.48
F. J. Halterman, 1202 W. Adams, Phoenix, Arizona	2.00
Mr. Hunt, 417-15 Oakland St., Phoenix, Ariz.	2.85
L. G. Harvey, 1122 W. Latham St., Phoenix, Arizona	7.27
Hi-Way Coffee Shop, Phoenix, Arizona..	4.10
Mrs. Harvey, 108 N. 21st Ave., Phoenix, Arizona	1.25
Mr. Hoagland, 127 E. Palm Lane, Phoenix, Arizona	7.51
Mrs. J. B. Harrison, 704 N. Central Ave., Phoenix, Ariz.	2.75
Mrs. Humphreys, 822 N. 6th Ave., Phoenix, Arizona	16.55

<i>vs. Momsen-Dunnegan-Ryan Company et al.</i>	117
Mr. Hyder, 511 N. 5th St., Phoenix, Arizona	4.15
Henderson Bros., N. 7th Ave., Phoenix, Arizona	1.75
Ingleside Inn, Phoenix, Arizona	59.65
G. W. Johns, 217 N. 16th Avenue, Phoenix, Arizona	3.20
Dalton Johnson, 2134 W. Jefferson St., Phoenix, Ariz.	2.60
Geo. A. Johnson, Toggery Shop, Mesa, Arizona	9.45
H. A. Jones, Five Points, Phoenix, Arizona	4.42
Mr. Johnson, 1010 W. Madison St., Phoenix, Ariz.	2.15
Jesse Hat Shop, Phoenix, Arizona	6.58
Mr. Johnson, 1107 Grand Avenue, Phoenix, Arizona	1.10
R. C. Ketchum, 401 N. 7th Avenue, Phoenix, Arizona	37.90
Mrs. Helen Kinsella, 610 N. 4th Avenue, Phoenix, Ariz.	5.70
B. Kilepher, 806 N. 3rd Avenue, Phoenix, Arizona	2.60
P. M. Kerrick, 81 W. Willetta St., Phoenix, Ariz.	2.55
Mrs. Kolling, 374 Verde Lane, Phoenix, Arizona	3.50
Mrs. Harry Konophy, Phoenix, Arizona	1.50
Lorraine Beauty Shop, 210 O'Neil Bldg., Phoenix, Ariz.	14.10
D. A. Little, 2109 W. Filmore St., Phoenix, Arizona	2.65

G. H. Lutgerding, E. Country Drive, Phoenix, Arizona	21.90
Lebanon Hotel, 333 N. 2nd Avenue, Phoenix, Arizona	98.95
Mrs. Thomas Lewis, 712 S. 7th St., Phoenix, Arizona	50.68
Mrs. Lane, 42 W. Culver St., Phoenix, Arizona	3.85
Mrs. Lindquist, 608 W. Van Buren St., Phoenix, Arizona	2.80
L. L. Lindsey, 1310 W. Moreland St., Phoenix, Arizona	1.89
Mrs. T. R. Lewis, 421 Southern Avenue, Phoenix, Arizona	21.72
Lincoln Mortgage Co., 1513 W. Taylor St., Phoenix, Ariz.	4.10
Mrs. R. Littlefield, 622 N. 6th Ave., Phoenix, Arizona	1.50
Mrs. Luke, 715 E. Washington St., Phoenix, Ariz.	2.65
Maricopa County, Phoenix, Arizona	128.90
Mrs. Mitchell, 507 E. Moreland St., Phoenix, Ariz.	3.50
H. L. Medinger, 158 W. Merrill St., Phoenix, Arizona	9.10
Mrs. J. H. Moore, 524 W. Portland St., Phoenix, Ariz.	8.20

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Schedule 3-B.-A.

Accounts Receivable—Continued.

Mr. Moss, 46 W. Lewis St., Phoenix, Arizona	1.45
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Mr. E. W. Montgomery, 537 E. Moreland St., Phoenix, Ariz.....	6.95
Moeller Apartments, 2nd Ave. & Filmore St., Phoenix	11.75
Modern Auto Court, 1930 W. Van Buren St., Phoenix, Ariz.	5.25
Mrs. Mathias, 816 N. 2nd St., Phoenix, Ariz.	4.75
Lee Moffitt, Phoenix, Arizona	31.28
L. W. McHattan, 1114 W. Lynwood St., Phoenix, Ariz.	8.80
Mc. McCray, 2615 N. 16th St., Phoenix, Ariz.	1.75
C. F. McConnell, Casa Grande, Arizona	158.11
Norman Landscape Gardners, 1509 N. Central Ave., Phoenix	38.46
North Central Coffee Shop, 506 N. Central Ave., Phoenix	55.40
Mrs. Nile, 1111 W. Adams St., Phoenix, Arizona	29.50
W. H. Nelson, Phoenix, Ariz.	5.40
Newcomers Realty Co., Phoenix, Arizona..	1.60
Mr. Nickerson, 840 N. 1st Avenue, Phoenix, Ariz.	1.75
A. D. Nace, 1540 W. Washington St., Phoenix, Arizona	28.59
J. E. Nelson, 1705 W. Jefferson St., Phoenix, Arizona	6.15
Mrs. H. L. Nace, 1546 W. Washington St., Phoenix, Ariz.	3.10
W. D. Northern, Phoenix, Arizona	7.50
New York Bakery, 248 E. Washington St., Phoenix, Ariz.	73.20

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J. G. O'Malley, 1202 N. 2nd St., Phoenix, Arizona	2.05
Phoenix Union High School District, Phoe- nix, Ariz.	1.75
E. E. Pascoe, 14 E. Adams St., Phoenix, Arizona	3.35
Wm. Pepper, 1st St. & McKinley, Phoenix, Ariz.	115.00
F. L. Perry, 722 N. 7th St., Phoenix, Ari- zona	1.35
R. H. Parsons, 1422 N. 2nd St., Phoenix, Ariz.	12.20
Mrs. Palmer, 315 E. Thomas Road, Phoenix, Ariz.	2.00
Phoenix Tent & Awning Co., 226 W. Adams St., Phoenix, Ariz. ....	.56
Phoenix Hotel, 1st & Jefferson Sts., Phoe- nix, Ariz.	2.00
J. B. Petty, 1345 Grand Avenue, Phoenix, Arizona	4.45
Phoenix Lunch Room, 231 E. Washington St., Phoenix, Ariz.	8.90
Pay'n Takit Garage, 5th Ave. & Washington Sts., Phoenix	18.75
Mr. Rubenstein, 2028 Richland Ave., Phoe- nix, Ariz.	29.25
Ranch House Land Co., 16 W. Roosevelt St., Phoenix, Ariz.	4.35
L. H. Rhuart, 720 E. McDowell, Phoenix, Arizona	12.20
R. G. Reid, 2529 Dayton St., Phoenix, Ari- zona	3.30

Jas. Rymer, c/o Packard Motor Co., Phoenix, Ariz.	28.95
Mr. Randell, 1310 W. Willetta St., Phoenix, Ariz.	5.85
Mrs. S. B. Richards, 810 N. 1st Ave., Phoenix, Ariz.	5.20
D. Rubenstein, c/o Western Builders, Phoenix, Arizona	14.22
State of Arizona, Phoenix, Arizona	91.63
Mrs. Lee, 140 N. Central Ave., Phoenix, Ariz.	9.95
Standard Sanitary Mfg. Co., Phoenix, Arizona	517.85
Mr. Shackelford, 231 W. Jefferson St., Phoenix, Ariz.	1.50
Mr. Stellar, 925 N. 9th Ave., Phoenix, Ariz.	1.45
Mr. Stillet, 825 N. 9th Ave., Phoenix, Arizona	1.75
H. L. Stine, 1819 W. Jefferson St., Phoenix, Ariz.	101.20
R. F. Soule, 1336 E. Moreland, Phoenix, Arizona	1.25
Stearnman Construction Co., Phoenix, Arizona	72.45
Mrs. Shaw, 72 Mitchell Drive, Phoenix, Arizona	4.50
Dr. Stoner, 429 Ellis Bldg., Phoenix, Arizona	4.40
S. A. Sprague, 834 E. Palm Lane, Phoenix, Arizona	1.00
Ralph Summers, 1217 E. Culver St., Phoenix, Arizona	7.10

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T. J. Smith, 1221 E. Monroe St., Phoenix,
 Arizona 18.20

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Schedule 3-B.-A.

Accounts Receivable—Continued.

Southwestern Mfg. Co., Phoenix, Arizona ..	135.05
Mrs. Stevens, 1204 W. Washington St., Phoenix, Ariz.	1.35
Mr. Stone, 743 E. Portland St., Phoenix, Ariz.	2.80
Star Sheet Metal Works, Phoenix, Arizona.	2.40
Mr. Treadwell, 1027 N. 11th St., Phoenix, Arizona	4.50
Mr. Towne, 4024 N. Vernon, Phoenix, Ari- zona	6.55
H. R. Tritle, 611 N. Central Ave., Phoenix, Ariz.	1.25
E. W. Thayer, Phoenix, Arizona	171.47
Mr. Towles, 756 E. Moreland St., Phoenix, Arizona	3.10
J. Thornton, 333 W. Latham St., Phoenix, Ariz.	6.10
Mrs. H. B. Tracy, Phoenix, Arizona	4.05
Mr. Turley, Tempe, Arizona	21.00
W. A. Thompson Electrical Co., 123 W. Adams St., Phoenix, Ariz.	1.18
Mr. Taylor, 2021 Alvarado St., Phoenix, Ari- zona	15.50
W. H. Tate, 720 N. 7th Ave.	1.25
J. C. Tudy, Woodlea St., Phoenix, Arizona.	11.95
Mr. Tootle, 955 W. Moreland St., Phoenix, Ariz.	30.80

<i>vs. Momsen-Dunnegan-Ryan Company et al.</i>	123
Mr. Urban, 636 N. 3rd Ave., Phoenix, Ariz. . .	2.90
G. W. Vickers, 840 N. 1st Ave., Phoenix, Ariz.	5.75
E. O. Van Rheim, 313 N. 20th Ave., Phoenix, Ariz.	4.50
Mr. Woodbridge, R. F. D. #7, Box 1180, Phoenix, Arizona	9.20
Mr. Warren, 825 E. Sheridan St., Phoenix, Ariz.	2.00
J. M. Wilson, 404 N. 7th Ave., Phoenix, Ariz.	11.75
Mr. Williams, 1218 N. 3rd St., Phoenix, Ariz.	3.50
M. E. Waddoups, 2020 N. Central Avenue, Phoenix, Ariz.	7.90
J. W. Walker, Ellis Bldg., Phoenix, Ari- zona	58.10
Winsor Mule Market, Phoenix, Arizona . . .	3.70
Mrs. Grace Wright, 1722 W. Jackson St., Phoenix, Ariz.	6.11
Elmer Warren, 1508 W. Filmore St., Phoe- nix, Ariz.	15.00
W. A. Walker, 2107 W. Adams St., Phoenix, Arizona	7.95
W. A. Washburn, 324 N. 9th Ave., Phoenix, Ariz.	6.55
Mr. Winship, 715 N. 12th Ave., Phoenix, Ariz. . . . .	.75
Mr. Warren, 612 N. 5th Ave., Phoenix, Ari- zona	1.00
E. B. Walluk, 85 W. Willetta St., Phoenix, Arizona	7.20

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Mrs. Hannah White, 1715 W. Van Buren St., Phoenix, Ariz.	1.50
Mr. T. B. Williams, 817 N. 4th Ave., Phoenix, Ariz.	12.95
Mrs. Weener, 817 W. McKinley St., Phoenix, Arizona	4.50
Mr. Weatherbee, 2126 W. Jefferson St., Phoenix, Ariz.	9.90
J. L. Walker, 649 N. 4th Ave., Phoenix, Arizona	36.54
Tom Weatherford, Contractor, Phoenix, Arizona	72.74
A. F. Waselewski Construction Co., Phoenix, Arizona	65.49
Dr. Wilkinson, 825 E. McDowell, Phoenix, Arizona	5.05
Mr. Wolfe, 1014 N. Central, Phoenix, Arizona	1.75
E. S. Walker, 503 E. Willetta St., Phoenix, Ariz.	4.10
D. A. Wagner, 302 E. Pierce St., Phoenix, Ariz.	6.35
Western Builders, Phoenix, Arizona	1.75
Mrs. John Webber, Phoenix, Arizona	1.85
T. B. Williams, Phoenix, Arizona	2.00
Mr. Yeager, 544 E. Lynwood St., Phoenix, Arizona	25.05
J. Zurite, 233 E. Jefferson St., Phoenix, Arizona	6.08

Schedule B.-3-D.

UNLIQUIDATED CLAIMS.

Backowitz Apartments, Phoenix, Arizona. Mechanic's lien filed and being fore- closed. Estimated	2,600.00
O. R. Bell, Phoenix, Arizona. Job 12th Ave. and Van Buren St.	149.66
O. R. Bell, Phoenix, Arizona. Job 23 W. Monroe St., Phoenix, Arizona	287.91
W. H. Brown, Contractor State Hospital for the Insane. Contract and extras, \$7,- 270.05; credits, \$4,080.00, balance as- signed May, 7, 1929, to Standard Sani- tary Mfg. Co., Phoenix, Arizona	3,190.05
James Barnes, Phoenix, Arizona, Latham Street job, assigned to Crane Company.	271.49
Cabel Job, Phoenix, Arizona, 7th & Desert Sts. Charges \$190.60, credits \$25.00; thinks another \$25.00 payment made but not credited, about	140.60
City of Phoenix, New City Hall. Contract \$23,233.85, credits \$14,526.00, balance assigned to Standard Sanitary Mfg. Co., Phoenix, Arizona, on May 7, 1939 ..	8,707.85
This job taken over by Southern Surety Company, bondsman for completion.	
Eagan Construction Co., Phoenix, Arizona; deanery for Trinity Cathedral	238.90
Elliott Engineering Co. Contract on Wash- ington School. Contract and extras \$714.05; owes Elliott Engineering Com-	

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pany about \$2,600.00 over and above this amount	00.00
Green & Hall, contractors, Phoenix, Arizona, Dan Campbell Job; Charges \$1,597.55, credits \$900.00, balance \$697.55; \$500.00 assigned to Crane Company, balance...	197.00
Green & Hall, Phoenix, Arizona; Old resi- dence; extras	11.50
Green & Hall, Phoenix, Arizona, W. W. Knorpp residence; charged \$3,107.98; credits \$2,930.30; balance.....	177.68
Green & Hall, Phoenix, Arizona, Dowell Contract	254.00
Green & Hall, Phoenix, Arizona, E. J. Ben- nitt Residence. Balance due, esti- mated	1,968.86
Green & Hall, Phoenix, Arizona, Schwen- ker Residence. Contract \$2,934.00, credits, \$1,300.00; balance \$1,634.00. Job taken over by Massachusetts Bond- ing Company for completion at cost of about \$300.00; balance, about.....	1,334.00
Balance assigned to Crane Company.	
Harvey & Reed, Contractors Washington School. Charges	69.08
Litchfield School District, Litchfield School. Contract & Extras, \$2,077.70; credits \$2,020.00, balance	57.70

Schedule B.-3-D.

Unliquidated Claims—Continued.

Hagan & Farmer, Contractors, Marana Teachers College, Marana, Arizona, balance due about	100.00
Mesa Bank Building, Mesa, Arizona. Don't know. Looks like overpaid.	
E. W. Michael, Phoenix, Arizona; balance due	135.50
H. A. Patterson, Contractor, Res. 355 E. Palm Lane	42.54
Wm. Pepper, Contractor, Lutheran Church; charges \$594.50, credits \$297.25; offset by what owes Pepper	00.00
Phoenix Union High School District, Phoenix, Arizona; Central Heating Plant; contract and extras \$29,326.10; credits \$25,819.00, balance assigned May 7, 1929, to Standard Sanitary Mfg. Co., Phoenix, Arizona	3,507.10
Job taken over by Massachusetts Bonding Company for completion.	
Phoenix Union High School District, Phoenix, Arizona; Junior College Building; contract and extras \$8,424.00; credits, \$6,318.00, balance assigned to Standard Sanitary Mfg. Co., May 7, 1929	2,106.00
Job still uncompleted.	
Phoenix Union High School District, Phoenix, Arizona; Library and class room building; contract and extras \$18,860.12; credits \$9,450.00; balance as-	

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signed May 7, 1929, to Standard Sanitary Mfg. Co., Phoenix, Arizona	9,410.12
This job taken over by American Bonding Company for completion.	
Joe Samardo, Phoenix, Arizona; balance due	60.00
Southern Prison Company, contract on city Hall	375.00
J. W. Tucker, Contractor, Phoenix, Arizona, Mel Fickas residence, about	100.00
Mr. Taylor, 2021 Elvarado St., Phoenix, Arizona	166.25
Yuma High School District, Yuma, Arizona; Contract \$5,717.00; credits \$2,997.08; This job taken over by Massachusetts Bonding Company for completion	00.00

SCHEDULE B. (4)

PROPERTY IN REVERSION, REMAINDER OR EXPECTANCY, INCLUDING PROPERTY HELD IN TRUST FOR THE DEBTOR, OR SUBJECT TO ANY POWER OR RIGHT TO DISPOSE OF OR TO CHARGE.

(N. B.—A particular description of each interest must be entered. If all, or any of the debtor's property has been conveyed by deed or assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as it is known to the debtor.)

General Interest.	PARTICULAR DESCRIPTION	Supposed Value of My Interest	
		Dollars	Cents
Interest in land.	None.		
Personal Property.	None.		
Property in money, stock, shares, bonds, annuities, etc.	None.		
Rights and powers, legacies and bequests.	None.		
Total.....			

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Property heretofore conveyed for the benefit of creditors.

See Schedule A-2—showing assignments of contracts.

Amount realized from proceeds of property Conveyed

What portion of debtor's property has been conveyed by deed or assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.

None except as above stated.

What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.

None.

Total.....

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

LEO FRANCIS, Petitioner. [102]

SCHEDULE B. (5)

A particular statement of the property claimed as exempted from the operation of the Acts of Congress relating to Bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description and present use.

Military uniform, arms and equip- ments.	Valuation	
	Dollars	Cents
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.	Wearing apparel and ornaments	50 00
	1-Toledo power drive thread cutting machine	100 00
	1 bench vice	25 00
	1-36" Stilson wrench	2 50
	1-36" chain tong	2 50
	1 pipe cutter from 2½ to 4".....	4 00
	1-claw-hammer	35
	1 ball peon-hammer	50
	1 single jack-hammer	75
	1 monkey-wrench	50
	4 rock points	1 00
	2 cold chisels	70
	1-14" Stilson wrench	1 00
	1-10" Stilson wrench	75
	2-18" Stilson wrenches	2 50
	2-24" Stilson wrenches	3 00
	1 Trimo pipe cutter from ¼ to 2".....	2 50
	1-#1 A. Toledo stocks from 1 to 2".....	8 00
	1-#0 Toledo stocks from ⅜ to 1"	5 00
	1-Toledo stocks from 2½ to 4".....	15 00
	1 pipe reamer	0 00
	1 brace and bit	75
	1 rod spud wrench	1 00
	Total.....	427 30

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

OATH TO SCHEDULE "B."

United States of America,
Federal District of Arizona,—ss.

In the Matter of Momsen-Dunnegan-Ryan Co., et
al., Petitioners, vs. Phoenix Plumbing and
Heating Company et al., Alleged Bankrupts.
In Bankruptcy No. B.-522—Phoenix.

On this — day of September, A. D. 1929, be-
fore me personally came Leo Francis, one of the
persons mentioned in and who subscribed to the
foregoing Schedule and who being by me first duly
sworn, did declare the said Schedule to be a state-
ment of all his estate, both real and personal, in ac-
cordance with the Acts of Congress relating to
Bankruptcy.

LEO FRANCIS.

Subscribed and sworn to, before me, this 17th
day of September, 1929.

[Seal]

O. E. SCHUPP,
Notary Public.

My commission expires February 15, 1932. [105]

SUMMARY OF DEBTS AND ASSETS.

From the statements of the bankrupt in Schedules A and B.

		Dollars	Cents
Schedule A.	1. (1) Taxes and debts due the United States..	None	
	1. (2) Taxes due States, Counties, Districts and Municipalities	322	91
	1. (3) Wages	169	00
	1. (4) Other debts preferred by law.....		
Schedule A.	2. Secured claims	48,136	44
Schedule A.	3. Unsecured claims	21,943	24
Schedule A.	4. Notes and bills which ought to be paid by other parties thereto.....		
Schedule A	5. Accommodation paper		
	Schedule A. Total	70,571	59
Schedule B.	1. Real Estate		
Schedule B.	2. a Cash on hand		
	2. b Bills, promissory notes, and securities....		
	2. c Stock in trade	3,500	00
	2. d Household goods, etc.	50	00
	2. e Books, prints and pictures.....		
	2. f Horses, cows and other animals.....		
	2. g Carriages and other vehicles	400	00
	2. h Farming stock and implements.....		
	2. i Shipping and shares in vessels.....		
	2. k Machinery, tools, etc.	177	30
	2. l Patents, copyrights and trade-marks....		
	2. m Other personal property		

Schedule B.	3. a	Debts due on open accounts.....	3,724 24
	3. b	Stocks, negotiable bonds, etc.	
	3. c	Policies of insurance	00 00
	3. d	Unliquidated claims	35,658 79
	3. e	Deposits of money in banks and else- where	
Schedule B.	4.	Property in reversion, remainder, trust, etc.	
Schedule B.	5.	Property claimed to be exempt.....	\$427.30
Schedule B.	6.	Books, deeds and papers	
		Schedule B, Total.....	43,510 33

(N. B.—This summary Blank must be filled out and properly footed.)

LEO FRANCIS, Petitioner. [106]

Back of Exhibit:

No. B.-522.

U. S. District Court.

Federal District of Arizona,

Phoenix Division.

In the Matter of Momsen-Dunnegan-Ryan Company, et al., Petitioning Creditors, vs. Phoenix Plumbing & Heating Company, et al. Alleged Bankrupts.

PETITION AND SCHEDULES.

O. E. SCHUPP,

Attorney for Bankrupt.

(P. O. Address)

507 Luhrs Bldg., Phoenix, Arizona.

Filed Sept. 18, 1929. C. R. McFall, Clerk United States District Court for the District of Arizona. By Archie L. Gee, Deputy Clerk.

Report of Special Master. Filed Feb. 18, 1930. C. R. McFall, Clerk United States District Court for the District of Arizona. By H. F. Schlittler, Deputy Clerk. [107]

B.-522.

PETITIONERS' EXHIBIT No. 8.

In Evidence.

AGREEMENT.

THIS AGREEMENT, made this 7th day of June, 1929, between Leo Francis, of Phoenix, Ari-

zona, hereinafter called "Employer," of the one part, and Cliff B. Fryberger, of Phoenix, Arizona, hereinafter called the "Manager," of the other part,

WITNESSETH:

(1) The employer shall employ the manager for the term of fifteen months from date hereof as manager of the employer's business as a dealer in plumbing and plumbing contractor, now carried on at No. 316 North 6th Avenue, in the city of Phoenix, Arizona, subject to the determination as hereinafter provided.

(2) The manager shall well and faithfully serve the employer in such capacity as aforesaid, and shall at all times devote his whole time, attention and energies to the management, superintendence and improvement of the said business to the utmost of his ability, and shall conduct said business for the protection of the creditors of the Phoenix Plumbing & Heating Company, owned by employer, and perform all such services, acts and things connected therewith as the employer shall from time to time direct, with the consent of the creditors of the Phoenix Plumbing & Heating Company, and as are of a kind properly belonging to the duties of a manager of such business.

(3) The manager shall not divulge any matters, relating to said business or to the employer or to any customer which may become known to the manager, to ~~the~~ any competitors by reason of his employment, or otherwise, save insofar as may be necessary to the interest of said business.

(4) The manager shall keep or cause to be kept all such books of accounts or other books as shall be needed for that purpose, and shall enter or cause to be entered therein the usual accounts or particulars of all goods and things bought and received and sold or delivered upon credit, or otherwise, in the course of said business and shall at all times [108] render to the employer and creditors accurate accounts and full statements of and concerning said business. Said books shall at all times be open to the inspection of the employer and his agents in that behalf.

(5) All moneys received by the employer, except such sum as shall be required to be paid to "petty cash" shall be deposited to the account of the Phoenix Plumbing & Heating Company in a local bank at Phoenix, Arizona, if possible on the date of receipt, and every payment in excess of \$10.00 shall be made by check drawn on such account. The manager shall not draw, or accept, or make any bill of exchange or promissory note on behalf of the employer or otherwise pledge his credit except so far as he may have been thereto authorized by the employer.

(6) The employer shall pay to the manager a salary of \$250.00 per month, semi-monthly, in installments of \$125.00 each, on the 1st day of each month and the 15th day of each month; and at the expiration of the fifteen months, if the business of the Phoenix Plumbing & Heating Company is in a solvent condition, said manager to receive a third

interest in addition to the above salary, for his services.

(7) The manager shall only have authority to sign all checks and receive moneys due the Phoenix Plumbing & Heating Company, and the manager shall furnish a surety bond to the employer in the amount of \$5,000.

IN WITNESS WHEREOF, the parties have hereunto set their hands, the day and year first hereinabove written.

LEO FRANCIS.

CLIFF B. FRYBERGER. [109]

State of Arizona,
County of Maricopa,—ss.

Before me, Caroline Helms, a notary public in and for said County and State, personally appeared Leo Francis and Cliff B. Fryberger, known to me to be the parties named in the within and foregoing instrument, and each for himself acknowledged to me that they executed the same for the purposes and considerations therein expresses.

[Seal]

CAROLINE HELMS,

Notary Public.

My commission expires Sept. 18th, 1932.

The above agreement is approved by me this 7th day of June, 1929.

B.-522.

PETITIONERS' EXHIBIT No. 9.

In Evidence.

Cancelled Checks.

No. F-106. The Commercial National Bank,
Phoenix, Ariz.

April 1, 1928.

Pay to the order of Walter Shayeb \$205.00—Two
Hundred no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.
D. L. FRANCIS.

DLF.

Endorsed on back: WALTER SHAYEB.

No. F-75. The Commercial National Bank,
Phoenix, Ariz.

May 10, 1929.

Pay to the order of Walter Shayeb \$1015.00—
One Thousand and Fifteen no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.
D. L. FRANCIS.

PAUL E. GEHRES.

Endorsed on back: WALTER SHAYEB.

HOWARD O. WORKMAN.

[111]

B.-522.

PETITIONERS' EXHIBIT No. 10.

In Evidence.

Cancelled Checks.

No. 838. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue, Phone 5065, Phoenix,
Ariz.

July 30, 1928.

The Commercial National Bank, Phoenix, Arizona.

Pay to the order of Joe Thomas \$712.00—Seven
Hundred Twelve Dollars.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

Endorsed on back: JOE THOMAS.

MAUD THOMAS.

No. 2383. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue, Telephone 5065, Phoenix,
Ariz.

4-12-1929.

The Commercial National Bank, Phoenix, Arizona.

Pay to the order of Joe Thomas \$1000.00—One
Thousand no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

Endorsed on back: JOE THOMAS.

No. 2724. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue, Phone 5065, Phoenix,
Ariz.

5-22-1929.

The Commercial National Bank, Phoenix, Arizona.

Pay to the order of Joe Thomas \$100.00—One
Hundred no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

Endorsed on back: JOE THOMAS.

No. F-103. Phoenix Arizona.

5-16-1929.

The Commercial National Bank, Phoenix, Ariz.

Pay to the order of Joe Thomas \$250.00—Two
Hundred fifty no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

D. L. FRANCIS.

PAUL E. GEHRES.

Endorsed on back: ARIZONA GARMENT
MFG. CO., 532 W. Eashington, Phoenix, Arizona.

No. F-105. The Commercial National Bank,
Phoenix, Ariz.

5-24-1929.

Pay to the order of Joe Thomas \$50.00—Fifty
no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

D. L. FRANCIS.

PAUL E. GEHRES.

Endorsed on back: JOE THOMAS.

No. F-98. The Commercial National Bank,
Phoenix, Ariz.

5-2-1929.

Pay to the order of Joe Thomas \$125.00—One
Hundred Twenty-five no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.
D. L. FRANCIS.

PAUL E. GEHRES.

Endorsed on back: JOE THOMAS. [112]

B.-522.

PETITIONERS' EXHIBIT No. 11.

In Evidence.

Cancelled check.

No. 7-74. The Commercial National Bank, Phoe-
nix, Ariz.

3/15 1929.

Pay to the order of M. Karam & Sons Merc. Co.
\$1100.00—Eleven Hundred no/100 Dollars.

PAUL E. GEHRES.

PHOENIX PLUMBING & HEATING CO.
D. L. FRANCIS.

Endorsed on back: Pay to the order of Sonora
Bank & Trust Co., Nogales, Arizona. M. Karam &
Sons Mercantile Co., For Deposit Only. [113]

No. 2724. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue, Phone 5065, Phoenix,
Ariz.

5-22-1929.

The Commercial National Bank, Phoenix, Arizona.

Pay to the order of Joe Thomas \$100.00—One
Hundred no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

Endorsed on back: JOE THOMAS.

No. F-103. Phoenix Arizona.

5-16-1929.

The Commercial National Bank, Phoenix, Ariz.

Pay to the order of Joe Thomas \$250.00—Two
Hundred fifty no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

D. L. FRANCIS.

PAUL E. GEHRES.

Endorsed on back: ARIZONA GARMENT
MFG. CO., 532 W. Eashington, Phoenix, Arizona.

No. F-105. The Commercial National Bank,
Phoenix, Ariz.

5-24-1929.

Pay to the order of Joe Thomas \$50.00—Fifty
no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

D. L. FRANCIS.

PAUL E. GEHRES.

Endorsed on back: JOE THOMAS.

No. F-98. The Commercial National Bank,
Phoenix, Ariz.

5-2-1929.

Pay to the order of Joe Thomas \$125.00—One
Hundred Twenty-five no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.
D. L. FRANCIS.

PAUL E. GEHRES.

Endorsed on back: JOE THOMAS. [112]

B.-522.

PETITIONERS' EXHIBIT No. 11.

In Evidence.

Cancelled check.

No. 7-74. The Commercial National Bank, Phoe-
nix, Ariz.

3/15 1929.

Pay to the order of M. Karam & Sons Merc. Co.
\$1100.00—Eleven Hundred no/100 Dollars.

PAUL E. GEHRES.

PHOENIX PLUMBING & HEATING CO.
D. L. FRANCIS.

Endorsed on back: Pay to the order of Sonora
Bank & Trust Co., Nogales, Arizona. M. Karam &
Sons Mercantile Co., For Deposit Only. [113]

B.-522.

PETITIONERS' EXHIBIT No. 12.

In Evidence.

Cancelled checks.

No. 2645. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue. Phone 5065. Phoenix,
Ariz.

May 11, 1929.

Pay to the order of Arizona Garment Mfg. Co.
\$113.46—***113***46*** Dollars.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

THE COMMERCIAL NATIONAL BANK,

Phoenix, Arizona.

Endorsed on back: ARIZONA GARMENT
MFG. CO., 532 W. Washington, Phoenix, Arizona.

No. 2611. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue. Phone 5065. Phoenix,
Ariz.

May 10, 1929.

Pay to the order of Arizona Garment Mfg. Co.
\$50.00—***50 Dol's***00 cts***Dollars.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

THE COMMERCIAL NATIONAL BANK,

Phoenix, Arizona.

vs. Momsen-Dunnegan-Ryan Company et al. 145

Endorsed on back: ARIZONA GARMENT
MFG. CO.

No. 2602. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue. Phone 5065. Phoenix,
Ariz.

May 8, 1929.

Pay to the order of Arizona Garment Mfg. Co.
\$170.00—***170 Dol's***00 cts***Dollars.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

THE COMMERCIAL NATIONAL BANK,
Phoenix, Arizona.

Endorsed on back: ARIZONA GARMENT
MFG. CO. By B. [114]

B.-522.

Page #2,—PETITIONERS' EXHIBIT No. 12.

In Evidence.

Cancelled checks.

No. 2496. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue. Phone 5065. Phoenix,
Ariz.

4-27 1929.

Pay to the order of Arizona Garment Mfg. Co.
\$180.00—***180 Dol's***00 cts***Dollars.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

THE COMMERCIAL NATIONAL BANK,

of Phoenix.

Phoenix, Arizona.

Endorsed on back: ARIZONA GARMENT
MFG. CO.

JOE THOMAS.

No. 2583. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue. Phone 5065. Phoenix,
Ariz.

May 4, 1929.

Pay to the order of Arizona Garment Mfg. Co.
\$98.52—***98 Dol's***52 cts***Dollars.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

THE COMMERCIAL NATIONAL BANK,

of Phoenix.

Phoenix, Arizona.

Endorsed on back: ARIZONA GARMENT
MFG. CO., 532 W. Washington, Phoenix, Arizona.

[115]

B-522.

PETITIONERS' EXHIBIT No. 13.

In Evidence.

Sheet No. _____

_____ Name: Sunshine Plumbing.

_____ Address: _____

Old Balance	Date	Checks in Detail	Date Deposits	Date	New Balance
2,150.00	Sep 29	9.92-	Sep 26 2150.00	Sep 26	2,150.00*
2,140.08	Oct 3	13.50-	20.06-	Sep 29	2,140.08*
2,106.52	Oct 3	100.00-		Oct 3	2,106.52*
2,006.52	Oct 5	1,500.00-		Oct 3	2,006.52*
506.52	Oct 7	17.93-	10.00-	Oct 5	506.52*
478.59	Oct 8	47.30-		Oct 7	478.59*
431.29	Oct 10	4.20-	10.00-	Oct 8	431.29*
417.09	Oct 11	15.00-	10.00- 35.00-	Oct 10	417.09*

Old Balance	Date	Checks in Detail	Date Deposits	Date	New Balance
357.09	Oct 13	6.00-		Oct 11	357.09*
351.09	Oct 14	38.40-	25.00- 25.00-	Oct 13	351.09*
262.69	Oct 15	115.00-		Oct 14	262.69*
193.54	Oct 17	5.00-		Oct 15	193.54*
188.54	Oct 17	50.00-		Oct 17	188.54*
138.54	Oct 19	10.00-		Oct 17	138.54*
128.54	Oct 22	3.59-		Oct 19	128.54*
124.95	Oct 26	35.00-		Oct 22	124.95*
89.95	May 11	89.95-		Oct 26	89.95*
				May 11	.00*

[116]

B.-522.

PETITIONERS' EXHIBIT No. 15.

In Evidence.

Face of Exhibit:

\$65.00.

12-8, 1928.

Thirty days after date *W* promise to pay to the order of J. R. Fleming Sixty-five no/100 Dollars for value received with interest at the rate of — per cent per annum from ——— and if the interest be not paid annually, to become as principal, and bear the same rate of interest. This note, is negotiable and payable without defalcation or discount and without any relief or benefit whatever from stay, valuation, appraisement, or homestead exemption laws.

PHOENIX PLBG. & HTG. CO.

D. FRANCIS.

Paid Jan. 12, 1929.

Phoenix National Bank.

No. ———. Due ———.

Back of Exhibit:

J. R. Fleming.

\$65.43

Face of Exhibit:

\$65.00.

12-8, 1928.

Sixty days after date we promise to pay to the order of J. R. Fleming Sixty-five no/100 Dollars, for value received with interest at the rate of — per cent per annum from ——— and if the interest be not paid annually, to become as principal, and bear the same rate of interest. This note is negotiable and payable without defalcation or discount and

150 *Standard Sanitary Manufacturing Company*

without any relief or benefit whatever from stay, valuation, appraisal, or homestead exemption laws.

PHOENIX PLBG. & HTG. CO.
D. FRANCIS.

Paid 2/18/29. J. R. F.

No. ———. Due.

Back of Exhibit:

J. R. Fleming. [117]

B.-522.

PETITIONERS' EXHIBIT No. 17.

In Evidence.

11-29-29.

Letter Head.

BRUNSWICK-KROESCHELL COMPANY

4221 Diversey Ave.

Chicago, Ill.

July 5, 1929.

Phoenix Plumbing & Heating Company,

316 North Sixth Avenue,

Phoenix, Arizona.

Gentlemen:

Subject: Oil Burning Equipment Co. Assignment
(File #D-10).

We received a wire from you on June 21st and have been waiting for the letter which you said would follow. We have not received such a letter from you, and inasmuch as you have not forwarded us your remittance for \$985.00 which represents the amount owing the Oil Burning Equipment Com-

pany and which was assigned to us, we feel that we should take some legal steps toward the collection. This amount is due us and we expect you to pay it to us at an early date.

If you have not already done so, kindly wire us in reference to the amount due. Your prompt attention will be appreciated.

Yours very truly,
BRUNSWICK-KROESCHELL COMPANY,
By WALTER G. COBB,
Chief Accountant Kroeschell Plant.
WGC:LW. [118]

B.-522.

PETITIONERS' EXHIBIT No. 22.

In Evidence.

12-3-29.

No. 31031 C/B.

SIDNEY P. OSBORN and NERI OSBORN, Jr.,
Plaintiffs,

vs.

W. J. BACHOWITZ and ROSE BACHOWITZ,
His Wife, VICTOR F. RODRIQUEZ, E. H.
WHEAT, WALTER DUBREE, CLINTON
CAMPBELL, LUTHER HILL, JAMES A.
BOYD, O. M. MOORE, H. L. and A. J.
CHRISTIAN, ALLISON STEEL MANU-
FACTURING COMPANY, a Corporation,
PHOENIX BUILDERS' SUPPLY COM-
PANY, a Corporation, C. P. MUNGER

ROCK COMPANY, a Corporation, ARIZONA SASH AND DOOR COMPANY, a Corporation, and JOHN DOE and JANE DOE, & PHOENIX PLUMBING & HEATING CO.,

Defendants.

SUMMONS.

The State of Arizona to: W. J. Bachowitz and Rose Bachowitz, His Wife; Victor F. Rodriquez; E. H. Wheat; Walter Dubree; Clinton Campbell; Luther Hill; James A. Boyd; O. M. Moore; H. L. and A. J. Christian; Allison Steel Manufacturing Company, a Corporation; Phoenix Builders' Supply Company, a Corporation; C. P. Munger Rock Company, a Corporation; Arizona Sash and Door Company, a Corporation; and John Doe and Jane Doe, Defendants,
GREETING:

YOU ARE HEREBY SUMMONED AND REQUIRED to appear in an action brought against you by the above-named plaintiffs in the Superior Court of Maricopa County, State of Arizona and answer the Complaint therein filed with the Clerk of said Court, at Phoenix, in said County, within twenty days after the service upon you of this Summons, if served in this said County, or in all other cases, within thirty days thereafter, the times above mentioned being exclusive of the day of service, or judgment by default will be taken against you.

Given under my hand and the seal of the Superior Court of Maricopa County, State of Arizona this 22d day of October, 1929.

(Seal)

WALTER S. WILSON,
Clerk of the Superior Court.

By M. B. FITTS,
Deputy Clerk. [119]

Acceptance of Service 10-25-29.

W. J. T.

B.-522. Petitioner's Exhibit No. 14 for Identification.

B.-522

Petitioner's Exhibit No. 22

In Evidence.

12-3-29.

Back of Exhibit:

State of Arizona,
County of Maricopa,—ss.

I HEREBY CERTIFY that I received the within Summons on the — day of —, A. D. 1929, at the hour of — M., and personally served the same on the — day of — A. D. 1929, —, being the defendant — named in said Summons, by delivering to —, County of Maricopa, a copy of said Summons, to which was attached a true copy of the complaint mentioned in said Summons.

Dated this — day of —, A. D. 1929.

_____,
Sheriff.

By _____,
Deputy Sheriff.

Fees, Service	\$ _____
Copies	\$ _____
Travel — miles	\$ _____
Publication	\$ _____
Total	\$ _____

No. —. In the Superior Court of Maricopa County, State of Arizona. Sidney P. Osborn, and Neri Osborn, Jr., Plaintiffs, vs. W. J. Bachowitz and Rose Bachowitz, His Wife, et al., Defendants. Summons. [120]

In the Superior Court of the County of Maricopa, in and for the State of Arizona.

No. 31,031-B.

SIDNEY P. OSBORN and NERI OSBORN, Jr.,
Plaintiffs,

vs.

W. J. BACHOWITZ, and ROSE BACHOWITZ,
His Wife, VICTOR F. RODRIQUEZ, E. H.
WHEAT, WALTER DUBREE, CLINTON
CAMPBELL, LUTHER HILL, JAMES A.
BOYD, O. M. MOORE, H. L. and A. J.
CHRISTIAN, ALLISON STEEL MANU-
FACTURING COMPANY, a Corporation,
PHOENIX BUILDERS' SUPPLY COM-

PANY, a Corporation, C. P. MUNGER
ROCK COMPANY, a Corporation, ARI-
ZONA SASH AND DOOR COMPANY, a
Corporation, and JOHN DOE and JANE
DOE,

Defendants.

COMPLAINT.

Come now the plaintiffs, Sidney P. Osborn and Neri Osborn, Jr., through their attorney, H. S. McCluskey, and for cause of action against defendants, complain and allege, as follows:

I.

That the plaintiffs, Sidney P. Osborn and Neri Osborn, Jr., and each of them, are residents of the city of Phoenix, County of Maricopa, State of Arizona.

That the defendants, W. J. Bachowitz and Rose Bachowitz, his wife, and each of them, are residents of the City of Phoenix, County of Maricopa, State of Arizona.

That the defendants, Victor F. Rodriquez, E. H. Wheat, Walter Dubree, Clinton Campbell, Luther Hill, James A. Boyd, O. M. Moore, H. L. and A. J. Christian, are all of them residents of the City of Phoenix, County of Maricopa, State of Arizona;

That the defendant, Allison Steel Manufacturing Company, is a corporation, duly incorporated and existing under and by virtue of the laws of Arizona, with its principal place of business in the city of

Phoenix, County of Maricopa, State of Arizona;
[121]

That the defendant, Phoenix Builders Supply Company, a corporation duly incorporated and existing under and by virtue of the laws of Arizona, with its principal place of business in the City of Phoenix, County of Maricopa, State of Arizona;
[122]

That the defendant, C. P. Munger Rock Company, is a corporation, duly incorporated and existing under and by virtue of the laws of Arizona, with its principal place of business in the City of Phoenix, County of Maricopa, State of Arizona;

That the defendant, Arizona Sash and Door Company, is a corporation, duly incorporated and existing under and by virtue of the laws of Arizona, with its principal place of business in the City of Phoenix, County of Maricopa, State of Arizona;

That John Doe and Jane Doe are unknown to the plaintiffs and such names are fictitious names and the plaintiffs pray to be allowed to insert the true names of said persons, corporations or partnerships, when discovered, with the same effect as if said names had been properly and correctly written herein at this time.

II.

That on or about the 1st day of February, 1928, the defendants, W. J. Bachowitz and Rose Bachowitz, his wife, became and were justly indebted to J. W. Sullivan, of Prescott, Yavapai County, State of Arizona, in the sum of Four Thousand Seven hundred (\$4,700.00) Dollars, and being so indebted,

in consideration thereof, and for value received, the said defendants, W. J. Bachowitz and Rose Bachowitz, his wife, made, executed and delivered to the said J. W. Sullivan, a certain promissory note for the sum of Four Thousand Seven Hundred (\$4,700.00) Dollars, with interest thereon at the rate of Seven (7) per cent per annum, as will more fully appear by the said instrument, ready to be produced in court, and by a copy of the same herewith filed and marked Exhibit "A" and made a part of this complaint;

That to secure the payment of the principal sum and interest above mentioned, the said defendants, W. J. Bachowitz [123] and Rose Bachowitz, his wife, by their deed, dated the 1st day of February, 1928, conveyed to J. W. Sullivan, in fee simple, the following described parcel of land, with the appurtenances, situated in the City of Phoenix, County of Maricopa, State of Arizona, to wit:

Lot two (2) in Block six (6) East Evergreen Addition according to the map or plat thereof on file and of record in the office of the County recorder of Maricopa County, State of Arizona, in Book 3 of Maps at page 55 thereof; and the deed to which is recorded in the office of the County Recorder of Maricopa County, State of Arizona, in Book of Mortgages No. 218 at page 173, subject, however, to a condition of defeasance upon the payment of the principal and interest aforesaid, according to the tenor and effect of the said instrument, which said mortgage was, on the day of its date, duly acknowledged by the said defend-

ants, W. J. Bachowitz and Rose Bachowitz, his wife, and on the 4th day of February, 1928, recorded in the office of the Recorder of the County of Maricopa, State of Arizona, at 9:09 o'clock in the forenoon of said day, in Book 209 of Mortgages, on pages 255 and 256, as, by the said mortgage and its accompanying certificates of acknowledgment and recording, ready to be produced in court, and by a copy thereof herewith filed and marked Exhibit "B," and made a part of this complaint, will more fully appear.

III.

That the plaintiffs herein aver that the said promissory note and mortgage were on the 6th day of October, 1929, and before the commencement of this action, duly assigned, transferred, delivered and endorsed to the plaintiffs herein for a valuable consideration, and which assignment of promissory note and mortgage on the day of its date, duly acknowledged, and afterwards on the 9th day of October, 1929, recorded in the office of the Recorder for the County of Maricopa, State of [124] Arizona, at 11:27 o'clock in the forenoon of said day in Book No. — of — on page —; as by the said Assignment of Mortgage and its accompanying certificates of acknowledgment and recording, ready to be produced in court, and by a copy thereof herewith filed and marked Exhibit "C," and made a part of this complaint, will more fully appear.

IV.

That the defendants, W. J. Bachowitz and Rose Bachowitz, his wife, failed to comply with the con-

ditions of the said promissory note and mortgage by omitting to pay the sum of Four Thousand Seven Hundred (\$4,700.00) Dollars, with interest thereon at the rate of seven (7) percent per annum, which by the terms of said note and mortgage became due and payable on or before the first day of November, 1928, the interest being payable at maturity; and that there is now justly due to the plaintiffs the sum of Four Thousand Seven Hundred (\$4,700.00) Dollars principal with interest thereon in the amount of Two Hundred and Forty-six and $75/100$ Dollars (\$246.75) with interest from the first day of November, 1928, on the said Four Thousand Seven Hundred (\$4,700.00) Dollars and the said Two Hundred and Forty-six and $75/100$ Dollars (\$246.75), at the rate of ten (10) per cent per annum as was specifically covenanted and agreed upon in the said mortgage and note.

V.

That the defendants, J. W. Bachowitz and Rose Bachowitz, his wife, failed to comply with the conditions of the said mortgage by omitting to pay to the proper officers all taxes and assessments assessed upon the said property or upon or within described note and mortgage, when the same became due, and to deliver the receipts therefor to the mortgagee, his representative or assigns, as was duly required of them, so to do, in the said mortgage heretofore described. And the mortgagee, J. W. Sullivan, because of default of the said defendants to [125] pay the said taxes and assessments and in order to maintain his liens, was compelled to pay

state, county, school district and city taxes and street improvement assessments and the interest thereon, assessed upon the said property, as follows, to wit:

November 5, 1928, state and county and	
school district taxes ..	\$ 25.96
March 15, 1929, City of Phoenix taxes..	15.25
March 15, 1929, City of Phoenix taxes..	15.24
October 14, 1929, Interest on street im-	
provement assessment.	13.43
October 14, 1929, Principal on street im-	
provement assessment.	125.34
	\$195.22

That plaintiffs in order to maintain their liens were compelled to pay state, county, school district and city taxes and interest and penalties and fees on delinquent taxes assessed upon said property covered by the said mortgage heretofore described, as follows, to wit:

October 11, 1929, state and county taxes,	
school district taxes, in-	
terest, penalties and fees	28.46
October 14, 1929, city of Phoenix taxes	43.82
October 21, 1929, state, county and school	
district taxes	95.89
	\$168.17

And on the 11th day of October, 1929, to pay to the Superintendent of Streets, of the City of Phoenix, Three Hundred and Sixty-four and 94/100 (\$364.94) dollars in order to redeem the said property, which had been sold to the City of Phoenix for

non-payment of principal and interest, advertising and penalty of assessment issued to represent the cost of improvements on Portland Street from the east line of Central Avenue to the west line of Seventh Street, in the said city, as by the receipts therefor, ready to be produced in court, and by copies of the same herewith filed and marked Exhibit "D," Exhibit "E," Exhibit "F," Exhibit "G," Exhibit "H," Exhibit "I" and Exhibit "J" and made a part of this complaint, will more fully appear; and that in addition to the sums mentioned in paragraph IV hereof there is due to the plaintiffs, from the defendants, the sum of Seven Hundred and twenty-eight and $33/100$ (\$728.33) dollars, with interest thereon at the rate of six per cent per annum upon the several aforementioned amounts from the date of [126] the payment thereof until paid.

VI.

That in the said note and mortgage it was expressly agreed that in case of the foreclosure of said note and mortgage by proceedings in court the said defendants, J. W. Bachowitz and Rose Bachowitz, his wife, agreed to pay ten per cent additional on the amount found due thereunder and plaintiffs claim that by the filing of this complaint under this clause in said note and mortgage there is now due to plaintiffs, for attorney's fees, Four Hundred and Ninety-four and $68/100$ (\$494.68) dollars, in addition to the sums heretofore mentioned in paragraphs IV and V of this complaint.

VII.

That no other action has been brought to recover

any part of the mortgage debt and that no part of the said mortgage debt has been collected.

VIII.

Plaintiffs further represent and charge that the said premises described in said mortgage are meager and scant security for the said sum of Four Thousand Seven Hundred (\$4,700.00) dollars and interest mentioned in the said note, deed and mortgage and the other amounts due these plaintiffs.

IX.

That plaintiffs allege and state on information and belief that Victor F. Rodriquez, E. H. Wheat, Walter Dubree, Clinton Campbell, Luther Hill, James A. Boyd, O. M. Moore, H. L. and A. J. Christian, Allison Steel Manufacturing Company, a corporation, Phoenix Builders' Supply Company, a corporation, C. P. Munger Rock Company, a corporation, Arizona Sash and Door Company, a corporation, and John Doe and Jane Doe have or claim to have some interest in the said mortgaged premises, or some part thereof, as purchasers, mortgagees, judgment creditors, and/or liens for labor and materials, or otherwise, which [127] interest, or liens, if any, they have accrued subsequently to the lien of the said mortgage of the plaintiffs and the same are subject hereto: The plaintiffs, therefore, demand that the defendants and all persons claiming under them subsequent to the commencement of this action may be barred and foreclosed of all right, claim, lien and equity of redemption in said mortgaged premises, or any part thereof, that

the said premises, or so much thereof as may be sufficient to raise the amount due to the plaintiffs for principal, interest and interest thereon, payment of taxes, interest, fees, penalties and assessments for improvements and interest thereon and costs, and which may be sold separately without material injury to the parties interested, may be decreed to be sold according to law; that out of the moneys arising from the sale thereof the plaintiffs may be paid the amounts due on the said promissory note and mortgage, with interest, at the rate of ten per cent per annum to the time of such payments, and for reimbursement for the taxes, interest, penalties and fees and assessments for improvements with the legal rate of interest thereon from the date of the payment of the same to the time of such payment and for attorney's fees, costs and expenses of this action so far as the amount of such moneys properly applicable thereto will pay the same; and that the defendants, W. J. Bachowitz and Rose Bachowitz, his wife, may be adjudged to pay any deficiency which may remain after applying all of said moneys so applicable thereto; and that the plaintiffs may have such other relief, or both, in the premises as shall be just and equitable.

H. S. McCLUSKEY,

Attorney for Plaintiffs, 407 Ellis Building, Phoenix, Arizona.

SIDNEY P. OSBORN.

NERI OSBORN, Jr. [128]

State of Arizona,
County of Maricopa,—ss.

Sidney P. Osborn and Neri Osborn, Jr., being first duly sworn, each for himself and not one for the other, deposes and says that he is the person mentioned in, and who subscribed to the foregoing complaint, as a plaintiff therein, that he has read the complaint, and believes the contents thereof to be true of his own knowledge, except as to those matters and things stated upon information and belief, and as to those he believes it to be true.

SIDNEY P. OSBORN.
NERI OSBORN, Jr.

Subscribed and sworn to before me this 21 day of
October, 1929.

[Seal]

H. S. McCLUSKEY,
Notary Public.

My commission expires Aug. 29, 1933. [129]

EXHIBIT "J."

No. 200.

CERTIFICATE OF SALE OF PROPERTY.

Sold for the non-payment of Principal and Interest, Advertising and Penalty of Assessment issued to represent the cost of improvement of PORTLAND STREET from the East line of Central Avenue to the West line of Seventh Street in the City of Phoenix, County of Maricopa, State of Arizona, Bond Series No. 3.

This instrument is to certify that on the 31st day of August, 1929, at the hour of 10:04 A. M., of said day, under and by virtue of the authority vested in me by Chapter 144 of the Session Laws of the State of Arizona of 1919, and amendments thereto, relating to the sale of property for non-payment either of the principal or of the interest, penalty, advertising or cost accruing account of the assessments for the improvement of Streets I, B. E. GILPIN, as Deputy Superintendent of Streets of the City of Phoenix, sold to City of Phoenix the following described lot, piece or parcel of land, situate, lying and being in the City of Phoenix, County of Maricopa, State of Arizona, and more particularly described as follows, to-wit: Lot 2, Block 6, East Evergreen for the sum of three hundred forty-seven and 56/100 (\$347.56) Dollars, which said amount was paid by the said City of Phoenix for said property.

That the said City of Phoenix was the one who was willing to take the least quantity of said lot, piece or parcel of land at said sale and pay amount due and unpaid upon that certain Assessment No. 26 Bond Series No. 3, issued to represent the assessment upon Lot 2, Block 6, East Evergreen for the improvement of PORTLAND STREET from the East line of Central Avenue to the West line of Seventh Street together with costs; the name of the owner of the property so sold, as given on the record of the assessment is unknown.

That the property herein described was sold by me for the said sum of three hundred forty-seven

and 56/100 (\$347.56) Dollars, that sum being the total amount of the principal and interest together with penalty, advertising and cost due and unpaid upon the said assessment, together with costs, and the items of which are as follows, to-wit:

Amount of unpaid principal of Assessment..	\$335.74
Amount of unpaid interest on Assessment...	10.07
Penalty .....	.50
Advertising	1.25
Certificate of Sale	
Costs	
	—————
	\$347.56

The above named purchaser will be entitled to a deed for the above described property on the 31st day of August 1930, upon giving notice and application therefor as provided by Chapter 144 of the Session Law of the State of Arizona of 1919, and amendments thereto, unless sooner redeemed, according to said Act.

Dated and filed in the office of the Superintendent of Streets of the City of Phoenix, this 31st day of August, 1929, the same being the date of the sale.

B. E. GILPIN,

Deputy Superintendent of Streets.

Release on redemption in full dated October 11th, 1929, by Sidney P. Osborn for the sum of \$364.94.

W. J. JAMIESON,

Superintendent of Streets. [130]

EXHIBIT "A."

\$4700.

Esc. 16179 J. B. M./W.

Phoenix, Arizona. February 1st, 1928.

On or before November 1st, 1928 for value received, we, or either of us promise to pay to J. W. Sullivan, or order, at — the sum of Four Thousand Seven Hundred and No/100 Dollars, with interest thereon from February 1st, 1928 to Maturity of this note, at the rate of seven percent per annum, payable at maturity.

Should the interest as above not be paid when due, it shall thereafter bear interest at ten percent per annum until paid.

Should the principal hereof not be paid in full at maturity, it shall thereafter bear interest at ten percent per annum until paid. Principal and interest payable in lawful money of the United States of America.

Should suit be brought to recover on this note, we promise to pay as attorney's fees ten percent additional on the amount found due hereunder.

This note is secured by a mortgage upon real property.

W. J. BACHOWITZ,
ROSE BACHOWITZ,
By Her Attorney-in-fact.

Prescott, July 24, 1928.

I am sending this note to my attorneys, Baker and Whitney, Phoenix by their request to be held by

them for me pending a certain lien on my property.

J. W. SULLIVAN. [131]

EXHIBIT "B."

MORTGAGE.

KNOW ALL MEN, That W. J. Bachowetz and Rose Bachowetz, his wife, of Maricopa County, Arizona, hereinafter referred to as the Mortgagors, in consideration of Four Thousand Seven Hundred and No/100 Dollars, in hand paid by J. W. Sullivan hereinafter referred to as the Mortgagee the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey to the Mortgagee his heirs and assigns forever, the following real estate, lying and being in the County of Maricopa, State of Arizona, known and described as

Lot 2, Block 6, East Evergreen, an Addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 3 of Maps, page 55 thereof;

TO HAVE AND TO HOLD the above described premises together with all the privileges and appurtenances thereunto belonging unto the mortgagee, his heirs, executors, administrators or assigns forever. And the mortgagors hereby covenant that they are well and truly seized of a good and perfect title to the premises above conveyed in the law, in fee simple, and have good right and lawful

authority to convey the same, and that the title so conveyed is clear, free and unincumbered and that they will forever warrant and defend the same to the mortgagee against all claims whatsoever.

PROVIDED ALWAYS, and these presents are upon this express condition that if the mortgagors shall pay to the mortgagee the just and full sum of Four Thousand Seven Hundred and No/100 Dollars, with interest thereon, according to the terms and conditions of one certain promissory note bearing even date herewith, due on or before November 1st, 1928, with interest thereon at 7% per annum, payable at maturity, and made and [132] executed by Mortgagors herein and payable to the order of the mortgagee and shall moreover pay to the proper officers all taxes and assessments, general or special, which shall be levied or assessed upon said real estate on or before the date when such taxes or assessments shall have become delinquent, and insure and keep insured the buildings on said premises against loss or damage by fire, in the sum of Dollars in insurance companies to be selected by the mortgagee, and the policies of insurance assigned or made payable to the said mortgagee, as interests may appear, until payment in full of said promissory note, and interest thereon, then these presents shall be null and void. In case of the non-payment of any sum of money (either of principal, interest or taxes) at the time or times when the same shall become due, or failure to insure said buildings according to the conditions of these presents, then the mortgagee may

pay same and add the amount so paid to the sum secured by this mortgage and in any such case, or in case of the failure on the part of the mortgagors to keep or perform any other agreement, stipulation or condition herein contained, or contained in the note above described, the whole amount of the said principal sum shall at the option of the mortgagee be deemed to have become due, and the same with interest thereon at the rate of ten (10) per cent per annum from the date of exercising said option, shall thereupon be collectible in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure shall occur as aforesaid.

And the mortgagors do further covenant and agree to keep the mortgaged property in good condition and not to permit any waste or deterioration thereof, and in case complaint is filed for a foreclosure of this mortgage, the mortgagee shall [133] be entitled to the appointment of a Receiver without bond to take possession of the mortgaged premises and collect the rents and profits thereof pending foreclosure proceedings and up to the time of redemption or issuance of sheriff's deed, and in case of such foreclosure the mortgagors will pay to the mortgagee in addition to the taxable costs of the foreclosure suit ten percent (10%) as attorney's fees, on the amount found due, together with a reasonable fee for title search made in preparation and conduct of such suit, which shall be a lien on said premises and secured by this mortgage, and in

case of settlement after suit is brought, but before trial, the mortgagors agree to pay one-half of the above attorney's fees as well as all payments that the mortgagee may be obliged to make for his security.

The covenants herein contained shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, The mortgagors have hereunto set their hands this 1st day of February, A. D. 1928.

W. J. BACHOWETZ. (Seal)

ROSE BACHOWETZ. (Seal)

By W. J. BACHOWETZ, (Seal)

Attorney-in-fact. (Seal)

Signed and sealed in the presence of

State of Arizona,
County of Maricopa,—ss.

Before me, J. J. Barkley, a Notary Public in and for the County of Maricopa, State of Arizona, on this day personally appeared W. J. Bachowetz, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 1st day of February, A. D. 1928.

[Seal]

J. J. BARKLEY,

Notary Public.

My commission expires July 14, 1930. [134]

State of Arizona,
County of Maricopa,—ss.

Before me, J. J. Barkley, a Notary Public in and for said County, State of Arizona, on this day personally appeared W. J. Bachowetz, known to me to be the person whose name is subscribed to the foregoing instrument as the attorney-in-fact of Rose Bachowetz, and acknowledged to me that he subscribed the name of the said Rose Bachowetz thereto as principal and his own name of attorney-in-fact, and as such attorney-in-fact he executed said instrument for the purpose and consideration therein expressed.

Witness my hand and seal of office this 1st day of February, A. D. 1928.

[Seal]

J. J. BARKLEY,
Notary Public.

My commission expires July 14, 1930.

Filed and recorded at request of J. W. Sullivan,
Feb. 4, 1928, at 9:09 A. M.

W. H. LINVILLE,
County Recorder,
By Addie F. Mauzy,
Deputy.

#3663.

State of Arizona,
County of Maricopa,—ss.

I, J. K. Ward, County Recorder in and for the County and State aforesaid, hereby certify that I have compared the foregoing copy with the record

of Mortgage from W. J. Bachowetz and Rose Bachowetz, his wife, to J. W. Sullivan, filed and recorded in my office on the 4th day of February, 1928, in Book No. 209 of Mortgages, at Pages 255-256, and that the same is a full, true and correct copy of such record and of the whole thereof.

Witness my hand and seal of office, this 21st day of October, A. D. 1929.

[Seal]

J. K. WARD,

County Recorder.

By Roger G. Laveen,

Deputy. [135]

EXHIBIT "C."

ASSIGNMENT OF MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS: That J. W. Sullivan, of Prescott, Arizona, the party of the first part, for and in consideration of the sum of Ten Dollars to him in hand paid by Sidney P. Osborn and Neri Osborn, Jr., the parties of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, assign, transfer and set over unto the said parties of the second part, a certain Indenture of Mortgage bearing date the First day of February, one thousand nine hundred twenty-eight, made and executed by W. J. Bachowitz and Rose Bachowitz, his wife to J. W. Sullivan, which said mortgage was recorded on the 4th day of February, 1928, in Book 209 of Mortgages, pages 255-256, in the office of the County Recorder of Maricopa County, Arizona.

Together with the note therein described, and the

money dye and to become due thereon, with the interest.

And the said party of the first part does hereby make, constitute and appoint the said parties of the second part his true and lawful attorney, irrevocable, in his name, or otherwise, but at the proper costs and charges of the said parties of the second part, to have, use and take all the lawful ways and means for the recovery of the said money and interest; and in case of a payment to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

IN WITNESS WHEREOF, said party of the first part has hereunto set his hand this 8 day of October, A. D. 1929.

J. W. SULLIVAN,

Signed and delivered in the presence of

H. R. WOOD. [136]

EXHIBIT "D."

No. 17729

33

RECEIPT FOR TAXES FOR THE YEAR 1928.

Maricopa County, Arizona.

First Installment:

(Due Sept. 3, 1928.

(Delinquent Nov. 5, 1928.

Second Installment:

(Due March 4, 1929.

(Delinquent May 6, 1929.

Compare at once with description of your property and see that it is correct.

Assessed to J. W. Sullivan, Phoenix, Arizona,

Nov. 5, 1928, in payment as shown of taxes for the year 1928 levied against the property described here on, as indicated by the assessment rolls of Maricopa County.

Description	Lot or sec.	Block or acres	Valuations Real Estate	State and County Property Tax
E. Evergreen	2	6	145	32.40

School Bond Tax
Dist. No. 1

19.53

(Paid Stamp)

Total Tax

\$51.93

Delinquent Tax

\$25.96

Paid.

JOHN D. CALHOUN,
County Treas.
By R. E.
RUTH EDWARDS.

Paid by

J. W. SULLIVAN. [137]

EXHIBIT "E."

Office of City Assessor and Ex-officio City Collector of the City of Phoenix, Maricopa County, Arizona.

Phoenix, Arizona, 10/14/29.
No. 208.

The City Tax for the fiscal year 1928-1929, on the following described property, the same being assessed to W. J. & Rose Bachowitz, is as follows:

	<u>Tax</u>
E. Evergreen, Lot 2, Block 6, Real Est. Valuations 1930	\$30.49
1st Inst. 15.25 & Pen. 2.28 paid 3/15/29 Rec. 24248.	
2nd Inst. 15.24 paid 3/15/29 Rec. 711.2	

LANNAS S. HENDERSON,
City Assessor and Ex-Officio City Collector.

B. [138]

EXHIBIT "F."

This is to certify that the interest due June 1st, 1928, in the amount of \$13.43 and interest and principal due Dec. 1, 1928, in the amount of \$125.34 was paid at this office by J. W. Sullivan, on Lot 2, Block 6, East Evergreen Addition to the City of Phoenix, Series #3, Assm. 26.

Signed

_____,
 Superintendent of Streets,
 By M. B. HARTLINE. [139]

EXHIBIT "G."

No. 5531.

RECEIPT FOR TAXES FOR THE YEAR '28,
 Maricopa County, Arizona.

Assessed to J. W. Sullivan, Phoenix, Arizona, October 11, 1929, in payment as shown of taxes levied against property described hereon, as indicated by the assessment-rolls of Maricopa County.

Description	Lot	Block	Valuations	State and	Schl. Tax	Total
			Real Estate	County Prop. Tax	Dist. No. 1		Tax
East Evergreen	2	6	1415	32.40	19.53	51.93

JOHN B. CALHOUN,
 Tax Collector.

By GORDON OSBORN,
 Deputy.

Paid by
 SIDNEY P. OSBORN,
 210 First Natl. Bk.,
 Phoenix, Arizona.

October 11, 1929.

Second Installment

Paid on this tax for year shown.

Delinquent tax.....	25.97
Line fee.....	.15
Interest	1.30
Penalty	1.04
	<hr/>
Total	28.46
Paid	28.46 [140]

EXHIBIT "H."

CITY OF PHOENIX, ARIZONA.

CURRENT TAX RECEIPT No. 63.

W. J. & Rose Bachowitz

By J. W. Sullivan.

Dated October 14, 1929.

City Taxes for the Fiscal year 1929-1930.

	Addition	Lots	Block	Land	Improve- ments	Total	Amt. of taxes
E. Evergreen	2	6	3955	3000	6955	87.63	

Paid first half 43.82

Bal. due 43.81

Received payment

LANNAS S. HENDERSON,

City Assessor and Ex-officio City Collector.

KAY ROBINSON,

Deputy. [141]

EXHIBIT "I."

No. 665

Vol. 2

STATE AND COUNTY TAX RECEIPT—1929.

Maricopa County, Arizona.

John D. Calhoun, County Treasurer and Ex-officio Tax Collector.

Paid by Sidney P. Osborn,
210 First Natl. Bk. Bldg.

Description	Lot	Block	Valua- tions Bl. Est.	Imp.	State & Co. Property Tax	Schl. Bond	Total Tax
						Tax Dist. No. 1	
E. Evergreen	2	6	1555	3000	128.91	62.86	191.77
					First Installment	Second Installment	
					95.89	95.88	

Assessed to

W. J. & ROSE BACHOWITZ

Paid by

SIDNEY P. OSBORN.

Paid Stamp of John D. Calhoun, County Treas.

Dated Oct. 21, 1929. [142]

B.-522.

PETITIONERS' EXHIBIT No. 23.

In Evidence.

12-3-29.

In the Superior Court of the County of Maricopa,
State of Arizona.

No. 31031-C.

SIDNEY P. OSBORN and NERI OSBORN, Jr.,
Plaintiffs,

vs.

W. J. BACHOWETZ and ROSE BACHOWETZ,
His Wife; VICTOR F. RODRIGUEZ; E.
H. WHEAT; PHOENIX BUILDERS'
SUPPLY COMPANY, a Corporation;
ALLISON STEEL MANUFACTURING
COMPANY, a Corporation; CLINTON
CAMPBELL, Personally, and as Trustee, and
LENA CAMPBELL, His Wife; C. P. MUN-
GER ROCK COMPANY, a Corporation;
WALTER DUBREE; H. L. CHRISTIAN;
A. J. CHRISTIAN; D. L. FRANCIS,
LYON FRANCIS and LEO FRANCIS,
Doing Business Under the Firm Name and
Style of PHOENIX PLUMBING and
HEATING COMPANY; LUTHER HILL;
JAMES A. BOYD; O. M. MOORE; ARI-
ZONA SASH-DOOR & GLASS COM-

PANY, a Corporation; WALTER J. THALHEIMER, Receiver for PHOENIX PLUMBING and HEATING COMPANY, Defendants.

AMENDED COMPLAINT.

Comes now the plaintiffs by their attorneys and for cause of action against the defendants complain and allege:

I.

That the plaintiffs and each of them are residents of Maricopa County, Arizona; that the defendants W. J. Bachowetz and Rose Bachowetz, his wife, Victor F. Rodriquez, E. H. Wheat, Walter Durbree, Clinton Campbell and Lena Compbell, his wife, O. M. Moore, H. L. Christian and A. J. Christian, are each and all, plaintiffs are informed and believe, residents of Maricopa County, Arizona; that the defendants C. P. Munger Rock Company, Arizona Sash-Door & Glass Company, Allison Steel Manufacturing Company and Phoenix Builders' Supply Company, are corporations organized and existing under and by virtue of the laws of the [143] State of Arizona, and doing business in Maricopa County therein; that the defendants Luther Hill and James A. Boyd, plaintiffs are informed and believe, are each of them nonresidents of the State of Arizona, and the place of residence of each of said defendants is unknown to these plaintiffs; that the defendants D. L. Francis, Lyon Francis and Leo Francis, doing business under the name and

style of Phoenix Plumbing and Heating Company, plaintiffs are informed and believe, are residents of Maricopa County, Arizona; that Walter J. Thalheimer, Receiver for Phoenix Plumbing and Heating Company, is a resident of Maricopa County, Arizona.

II.

That on or about the 1st day of February, 1928, at Phoenix, Maricopa County, Arizona, the defendants W. J. Bachowetz and Rose Bachowetz, his wife, made, executed and delivered to J. W. Sullivan in said Phoenix, Maricopa County, Arizona, their promissory note in writing for the sum of Forty-seven Hundred (\$4700.00) Dollars, with interest and attorneys' fees as therein provided, which said note is in words and figures as follows, to wit:

\$4700.00.

Esc. 16179. J.B.M./W.

Phoenix, Arizona, February 1st, 1928.

On or before November 1st, 1928, for value received, we, or either of us promise to pay to J. W. Sullivan, or order, at ——— the sum of Four Thousand Seven Hundred and no/100 Dollars, with interest thereon from February 1st, 1928, to maturity of this note, at the rate of seven per cent per annum, payable at maturity.

Should the interest as above not be paid when due, it shall thereafter bear interest at ten per cent per annum until paid.

Should the principal hereof not be paid in full at maturity, it shall thereafter bear interest at ten per cent per annum until paid. Principal and in-

terest payable in lawful money of the United States of America.

Should suit be brought to recover on this note, we promise to pay as attorney's fees ten per cent additional on the amount found due hereunder.

This note is secured by a mortgage upon real property.

W. J. BACHOWETZ.

ROSE BACHOWETZ.

By Her Attorney-in-fact. [144]

That said note contains the following writing on the back thereof:

Prescott, July 24, 1928.

I am sending this note to my attorneys, Baker and Whitney, Phoenix by their request to be held by them for me pending a certain lien on my property.

J. W. SULLIVAN.

III.

That in order to secure the payment of the principal sum of said promissory note the interest thereon and attorneys' fees as therein mentioned and provided said defendants W. J. Bachowetz and Rose Bachowetz, his wife, did execute and deliver to said J. W. Sullivan at Phoenix, Maricopa County, Arizona, their certain real estate mortgage bearing date the 1st day of February, 1928, which said mortgage is in words and figures as follows, to wit: [145]

“MORTGAGE.

“KNOW ALL MEN, That W. J. Bachowetz and

Rose Bachowetz, his wife, of Maricopa County, Arizona, hereinafter referred to as the Mortgagors, in consideration of Four Thousand Seven Hundred and No/100 Dollars, in hand paid by J. W. Sullivan hereinafter referred to as the Mortgagee the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey to the Mortgagee his heirs and assigns forever, the following real estate, lying and being in the County of Maricopa, State of Arizona, known and described as

“Lot 2, Block 6, East Evergreen, an Addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 3 of Maps, page 55 thereof;

“TO HAVE AND TO HOLD the above described premises together with all the privileges and appurtenances thereunto belonging unto the mortgagee, his heirs, executors, administrators or assigns forever. And the mortgagors hereby covenant that they are well and truly seized of a good and perfect title to the premises above conveyed in the law, in fee simple, and have good right and lawful authority to convey the same, and that the title so conveyed is clear, free and unincumbered and that they will forever warrant and defend the same to the mortgagee against all claims whatsoever.

“PROVIDED ALWAYS, and these presents are upon this express condition, that if the mortgagors shall pay to the mortgagee the just and full sum of Four Thousand Seven Hundred and No/100

Dollars, with interest thereon, according to the terms and conditions of one certain promissory note bearing even date herewith, due on or before November 1st, 1928, with interest thereon at 7% per annum, payable at maturity, and made and executed by Mortgagors herein and payable to the order of the mortgagee and shall moreover pay to the proper officers all taxes and assessments, general or special, which shall be levied or assessed upon said real estate on or before the date when such taxes or assessments shall have become delinquent, and insure and keep insured the buildings on said premises against loss or damage by fire, in the sum of Dollars in insurance companies to be selected by the mortgagee, and the policies of insurance assigned or made payable to the said mortgagee, as interests may appear, until payment in full of said promissory note, and interest thereon, then these presents shall be null and void. In case of the non-payment of any sum of money (either principal, interest or taxes) at the time or times when the same shall become due, or failure to insure said buildings according to the conditions of these presents, then the mortgagee may pay same and add the amount so paid to the sum secured, by this mortgage and in any such case, or in case of the failure on the part of the mortgagors to keep or perform any other agreement, stipulation or condition herein contained or contained in the note above described, the whole amount of the said principal sum shall at the option of the mortgagee be deemed to have become due, and

the same with interest thereon at the rate of ten (10) per cent per annum from the date of exercising said option, shall thereupon be collectible in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure shall occur as aforesaid.

“And the mortgagors do further covenant and agree to keep the mortgaged property in good condition and not to permit any [146] waste or deterioration thereof, and in case complaint is filed for a foreclosure of this mortgage, the mortgagee shall be entitled to the appointment of a Receiver without bond to take possession of the mortgaged premises and collect the rents and profits thereof pending foreclosure proceedings and up to the time of redemption or issuance of sheriff’s deed, and in case of such foreclosure the mortgagors will pay to the mortgagee in addition to the taxable costs of the foreclosure suit ten per cent (10%) as attorney’s fees, on the amount found due, together with a reasonable fee for title search made in preparation and conduct of such suit, which shall be a lien on said premises and secured by this mortgage, and in case of settlement after suit is brought, but before trial, the mortgagors agree to pay one-half of the above attorney’s fees as well as all payments that the mortgagee may be obliged to make for his security.

“The covenants herein contained shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

“IN WITNESS WHEREOF, the mortgagors have hereunto set their hands this 1st day of February, A. D. 1928.

“W. J. BACHOWETZ. (Seal)

“ROSE BACHOWETZ. (Seal)

“By W. J. BACHOWETZ, (Seal)

“Attorney-in-fact.

“Signed and sealed in presence of

“State of Arizona,

“County of Maricopa,—ss.

“Before me, J. J. Barkley, a Notary Public in and for the County of Maricopa, State of Arizona, on this day personally appeared W. J. Bachowetz known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

“Given under my hand and seal of office this 1st day of February, A. D. 1928.

“[Seal]

J. J. BARKLEY.

“My commission expires July 14, 1930.

“State of Arizona,

“County of Maricopa,—ss.

“Before me, J. J. Barkley, a Notary Public in and for said County, State of Arizona, on this day personally appeared W. J. Bachowetz known to me to be the person whose name is subscribed to the foregoing instrument as the Attorney in Fact of Rose Bachowetz, and acknowledged to me that he

subscribed the name of the said Rose Bachowetz thereto as principal and his own name of Attorney in Fact, and as such Attorney in Fact he executed said instrument for the purpose and consideration therein expressed.

“Witness my hand and seal of office this 1st day of February, A. D. 1928.

“[Seal]

J. J. BARKLEY,

“Notary Public.

“My commission expires July 14, 1930.” [147] and which said mortgage was duly acknowledged and certified so as to entitle it to be recorded and the same was on, to wit, the 4th day of February, 1928, at 9:09 o'clock A. M., of said day duly recorded in the County Recorder's Office of Maricopa County, Arizona, in Book 209 of Mortgages, at pages 255-256 thereof.

IV.

That thereafter, to wit: and on or about the 8th day of October, 1929, said J. W. Sullivan for value received did sell, assign and transfer said note mentioned in paragraph II of this amended complaint, and did assign the mortgage described in paragraph III of this amended complaint, to the plaintiffs, Sidney P. Osborn and Neri Osborn, Jr., which said assignment of mortgage was duly acknowledged and certified so as to entitle it to be recorded, and the same was on, to wit: the 9th day of October, 1929, at 11:27 A. M. of said day, duly recorded in the County Recorder's office of Maricopa County, Arizona, in Book 16, of Assignments, at page 175 thereof; that plaintiffs are now the owners and hold-

ers of the note and mortgage hereinbefore in this amended complaint described.

V.

That there was on the 1st day of November, 1928, due and owing to the plaintiffs from the defendants, W. J. Bachowetz and Rose Bachowetz, his wife, the sum of Four Thousand Nine Hundred Forty-nine and 69/100 (\$4949.69) Dollars, being principal and interest on said promissory note and mortgage according to the terms and conditions thereof to said November 1, 1928, and that no part of said sum has been paid by the said defendants, W. J. Bachowetz and Rose Bachowetz, his wife, nor by *anyone* else, though often demanded.

VI.

That by the terms of said note and mortgage it was further agreed and provided in substance that in the case of the nonpayment of any sum of money, either of principal, interest [148] or taxes, at the time or times when the same shall become due that the mortgagee may pay same and add the amount so paid to the sum secured by the mortgage herein described, and that the same shall bear interest in accordance with the terms of said mortgage; and it is further provided in said mortgage that the mortgagors will pay all costs including the attorney's fees therein provided for, enforcing the provisions of and foreclosing said mortgage, and the reasonable fees and costs for a title search, and all other costs, expenses, and taxes that might be

necessary to be paid by the mortgagee to protect his security.

VII.

That the plaintiffs were compelled to pay city, county and state taxes and assessments on the property herein described, in the sum of Three Hundred Sixty-three and $39/100$ (\$363.39) Dollars, in order to protect their security; that on the 11th day of October, 1929, plaintiffs in order to protect their security were also required to pay to the Superintendent of Streets of the City of Phoenix the sum of Three Hundred Sixty-four and $94/100$ (\$364.94) Dollars in order to redeem the property, herein described, and described in said mortgage, from a sale made of said property by the Superintendent of Streets of the City of Phoenix on the 31st day of August, 1929; that the plaintiffs were compelled to incur an expense of Twenty (\$20.00) Dollars for a title search to the above-described premises, for the purpose of foreclosure, which defendants have failed to pay; that the plaintiffs have been compelled to employ attorneys to collect the note herein set forth, and to foreclose the mortgage herein described, and have agreed to pay said attorneys a sum equal to ten per cent of the amount found due under said mortgage as provided in said note and mortgage, which sum amounts to Six Hundred (\$600.00) Dollars; that there is now due to [149] these plaintiffs upon said note and mortgage as of November 1, 1928, the following sums, principal and interest, on said promissory note and mortgage to November 1, 1928, Four Thousand Nine Hundred Forty Nine

and 69/100 (\$4949.69) Dollars; city, county and state taxes and assessments paid by plaintiffs, Three Hundred Sixty Three and 39/100 (\$363.39) Dollars; amount paid Superintendent of Streets to redeem said property from sale Three Hundred Sixty Four and 94/100 (\$364.94) Dollars; title search of said property Twenty (\$20.00) Dollars; attorney's fees Six Hundred (\$600.00) Dollars.

VIII.

That the record title to said premises as of the 20th day of November, 1929, appears in Clinton Campbell, Trustee, husband of Lena Campbell.

IX.

That the defendants, W. J. Bachowetz and Rose Bachowetz, his wife, Victor F. Rodriquez, E. H. Wheat, Walter Dubree, Clinton Campbell and Lena Campbell, his wife, O. M. Moore, H. L. Christian, and A. J. Christian, C. P. Munger Rock Company, Arizona Sash-Door & Glass Company, Allison Steel Manufacturing Company, Phoenix Builders' Supply Company, Luther Hill, James Boyd; D. L. Francis, Lyon Francis and Leo Francis, doing business under the name and style of Phoenix Plumbing and Heating Company; Walter J. Thalheimer, Receiver for Phoenix Plumbing and Heating Company, have or claim to have some interest in the property described herein and described in said mortgage herein set forth as judgment creditors, lien holders, encumbrancers, or otherwise, but said claim or claims is and are subsequent and inferior

to the mortgage herein described and sought to be foreclosed by these plaintiffs.

WHEREFORE, plaintiffs pray judgment against W. J. Bachowetz and Rose Bachowetz, his wife:
[150]

1. For the sum of Four Thousand Nine Hundred Forty Nine and 69/100 (\$4,949.69) Dollars, together with interest thereon at the rate of ten (10%) per cent per annum as provided in said promissory note from November 1, 1928, until paid, together with the further sum of Twenty (\$20.00) Dollars on account of title search made for the purpose of foreclosing this mortgage with interest thereon at the rate of six (6%) per cent per annum from date of judgment until paid; together with the further sum of Six Hundred (\$600.00) Dollars, attorney's fees with interest thereon at the rate of six (6%) per cent per annum from date of judgment until paid; together with a further sum sufficient to pay all taxes and assessments due, or paid, with interest, penalties and costs; together with the further sum of Three Hundred Sixty Four and 94/100 (\$364.94) Dollars, paid by plaintiffs to redeem said property from a sale made by the Superintendent of Streets of the City of Phoenix, with interest thereon at the rate of six (6%) per cent per annum from judgment until paid.

2. For plaintiffs' costs and disbursements herein.

3. That the usual decree may be made for the sale of said premises by the sheriff of Maricopa County, Arizona, according to law, and according to the practice of this court; and that the proceeds of

said sale may be applied to the payment of the amounts due to plaintiff as aforesaid; and that the defendants, W. J. Bachowetz and Rose Bachowetz, his wife, Victor F. Rodriquez, E. H. Wheat, Walter Dubree, Clinton Campbell and Lena Campbell, his wife, O. M. Moore, H. L. Christian and A. J. Christian, C. P. Munger Rock Company, Arizona Sash-Door & Glass Company, Allison Steel Manufacturing Company, Phoenix Builders' Supply Company, Luther Hill, James Boyd; D. L. Francis, Lyon Francis and Leo Francis, doing business under the name and style of Phoenix Plumbing and Heating Company; Walter J. Thalheimer, [151] Receiver for Phoenix Plumbing and Heating Company, and all persons claiming by, through or under them, or either of them, subsequent to the execution of said mortgage upon said premises, either as purchasers, judgment creditors, lien holders or otherwise, may be barred and forever foreclosed of all rights, claims or equity of redemption in the said premises and every part and parcel thereof.

4. That the plaintiffs or any other party to this suit may become a purchaser at said sale, and that upon the expiration of the time allowed by law for the redemption of the premises from such sale the sheriff execute a deed to the purchaser and that the purchaser be let into the possession of the said premises upon the production of the sheriff's deed therefor;

5. That if there is any deficiency after the sale of said property that the plaintiff have execution

against the defendants, W. J. Bachowetz and Rose Bachowetz, his wife, for same.

6. That the plaintiffs may have such other and further relief in the premises as to this Court may seem meet and equitable; and that plaintiffs have general relief.

H. S. McCLUSKEY,
Attorney for Plaintiffs.

BAKER & WHITNEY,
Of Counsel. [152]

B.-522.

PETITIONERS' EXHIBIT No. 24.

In Evidence.

STATEMENT.

FRED NOLL TIRE SERVICE

540-W. Van Buren

PHOENIX, ARIZ.

To D. Francis

Separate from

Plumbing bill during May.

Date	Article	Debits	Credits	Balance
5/9	5 gall gs.....	1.00		
12	tu repair .....	.50		
13	9½ gall g.....	1.90		
14	12 " "	2.40		
16	1½ " " .....	.30		
16	2 q oil.....	.70		
27	5 gall gas.....	1.00		
3	5 " " 7 q oil..	3.45		
9	1 q oil.....	.25	Paid	
6	9 gall gas.....	1.80	7-12-29	
24	5¾ gall gas.....	1.15		
24	9 gall gas.....	1.80		
		16.25		

All the above is use out figureng job.

D. FRANCIS.

B.-522.

PETITIONERS' EXHIBIT No. 16.

For Identification. [153]

B.-522.

PETITIONER'S EXHIBIT No. 24.

In Evidence.

DEBIT SLIPS.

5/ 9/29	Phx. Plumb. 1 qts. oil.....	.25
	Marie Francis.	
5/14	Phx. Plumbing Co. 10 gals. Gas.....	
	12	2.40
	Tucson D. Francis.	
	Phoenix Plumb. Co. 5-13-29 9 $\frac{1}{2}$ @ 20.....	1.90
	Yuma D. Francis.	
5/12/29	Phoenix Plumb. 1 tire rep.....	.50
	chg. D. Francis.	
5/ 9/29	Phoenix Plumbing Co. 5 gal. @ 20.....	1.00
	D. Francis.	
5/10/29	Phoenix Plumb. 1 $\frac{1}{2}$ gal. Gas @ 20.....	.30
	D. Francis.	
5/10/29	Phoenix Plumb. Co. 2 qts. Oil @ 35.....	.70
	Dee Francis, M. F.	
May 3 1929	Phx. Plumb. Co. 5 gal. gas, 1.00	
	7 qt. oil @ 35 2.45.....	3.45
	Safford D. Francis Ck. No. 30448.	
5/27/29	Phx. Plumbing 5 gal. Gas.....	1.00
	Glendale D. Francis.	
5/ 6/29	Phoenix Plumb. 9 gallon.....	\$1.80
	Safford. D. Francis.	

5/24	Phoenix Plumbing Co. 9 Gal. Gas @ 20.....	1.80
	Prescott. D. Francis.	
5/24/29	Phx. Plumbing Co. 5¾ gal. Gs. @ 20.....	1.15
	Desert Hotel. D. Francis.	

Petitioners' Exhibit No. 16 for Identification. [154]

B.-522.

PETITIONERS' EXHIBIT No. 25.

In Evidence.

12-3-29.

Letter Head.

The Southwest Audit Co.

PHOENIX PLUMBING & HEATING COMPANY.

FINANCIAL STATEMENT.

August 17, 1929.

ASSETS:

Cash in Bank	\$ 20.97
Cash on Hand	5.42
Accounts Receivable	5,959.70
Contracts Receivable	17,113.57
Mdse.—Inventory—Estimated	3,000.00
Furniture & Fixtures	499.75
Auto Trucks	400.00
Shop Tools & Equipment	365.00
Deficit	43,716.06
	<hr/>
TOTAL	\$71,080.47

LIABILITIES:

Accounts payable	\$64,980.47
Notes Payable—Commercial Nat'l Bank	6,100.00
	<hr/>
TOTAL	\$71,080.47

[155]

B.-522.

Petitioners' Exhibit No. 25.

In Evidence.

12-3-29.

Letter Head.

The Southwest Audit Co.

PHOENIX PLUMBING & HEATING COM-
PANY.

FINANCIAL STATEMENT.

April 30, 1929.

ASSETS:

Cash on Hand and in Bank	\$ 264.65
Accounts Receivable	5,396.86
Contracts Receivable	27,148.47
Mdse.—Inventory—Estimated	5,000.00
Furniture & Fixtures	499.75
Auto Trucks	400.00
Shop Tools & Equipment	365.00
Deficit	30,165.82
	<hr/>
TOTAL	\$69,240.35

LIABILITIES:

Accounts Payable	\$62,059.73
Contract Payable—Wm. Remsbot- tom	92.80
Notes Payable—Commercial Nat'l. Bank	6,000.00
Cash Advanced by Joe Thomas	1,087.82
	<hr/>
TOTAL	\$69,240.35

[156]

B.-522.

PETITIONERS' EXHIBIT No. 26.

In Evidence.

12-5-29.

STATEMENT AS A BASIS FOR CREDIT.

MEMO TO

R. G. DUN & CO.

THE MERCANTILE AGENCY.

On the Financial Condition of The Phoenix,
Plumbing & Heating Company.

Location—316 N. 6th Ave. Phoenix, County of
Maricopa, State of Arizona.

Business—Plumbing & Heating Contractors &
Engineers.

Date to which all the items of the statement relate
—June 1, 1928.

Full names of all partners—

Mr. D. L. Francis. Age—34. Married or
single—Married.

Mr. Lyon Francis. Age—23. Married or single—Married.

Mr. Leo Francis. Age 22. Married or single—Married.

How long in business here? 11 months. Whom do you succeed, if anyone? Wm. Remsbottom. Where from, Town and State? Fort Smith, Arkansas.

Former occupation? Heating & Plumbing Engineers.

Ever fail? No. If so, when and where?

ASSETS.

(When no figures are entered use the word NONE.)

Merchandise on hand at cash value	\$ 6,042.95
Outstanding accounts at realizable value	2,642.78
Notes receivable at realizable value	223.10
Cash on hand,)	
Both	1,684.38
Cash in bank,)	
Machinery, Fixtures, etc	2,244.75
Deposits on plans & bids	1,138.00
Due on contracts	14,300.73

Total available assets \$28,276.99

REAL ESTATE: Describe, locate, and value separately, and in whose name held—NONE.

Total value of real estate

Mortgages or amount unpaid thereon

Equity in real estate

Total worth in and out of business

LIABILITIES.

For merchandise not due (open account)	\$ 7,195.36
For merchandise past due (open account)	None
For merchandise (notes payable).....	None
Loans from bank	4,000.00
Loans from friends or relatives	None
Int. cont. pay	1,845.08
Cap. Investment Acct.	15,236.55

Other obligations, consisting of\$28,276.99

Is the statement of value of stock on hand made upon the basis of an inventory actually taken?

And if so, on what date? Actual inventory, May 31, 1928.

What, in your opinion, is the total amount of your assets and of your liabilities as they are at the date of signing this statement? Total assets \$ 25% over the above Total liabilities \$ 25% over the above.

Amount of chattel mortgages, if any, on stock or fixtures,—\$ None.

If any of the above accounts are pledged state the amount,—\$ None.

Are there any existing liens on personal property not mentioned above? If so, what? Conditional sales contract on fixtures & Machinery.

[157]

Contingent liabilities upon bills of exchange, endorsements, guarantees, etc.—\$ None.

vs. Momsen-Dunnegan-Ryan Company et al. 201

Annual sales (estimate)—\$120,000.00. Annual Rent—\$636.00.

Annual Expense—\$4,500.00.

Do you keep books of account of the business? Yes.

If so, name them—Cost system, cash journal, general ledger, contract & accts. Rec. ledger.

Fire Protection. State its general nature—public fire department, sprinkler system, fire extinguishers, night watchman, etc.—Watchman and Public Fire Dept.

INSURANCE: On Merchandise—\$1,800.00. On Machinery and Fixtures—\$500.00. On Buildings—\$ None.

Did you ever suffer a fire loss? No. If so, where and when? ———

Did fire originate on your premises? ———

Do you carry employer's liability insurance? Yes.

Date of signing statement—August 14, 1928.

PHOENIX PLUMBING & HEATING.

PAUL E. GEHRES,

Cashier.

B.-522. Petitioners' Exhibit No. 17 for Identification. [158]

IMPORTANT.

Kindly give the names of a few houses from whom you make your largest purchases.

Name	Street Address	City and State	Amount Owing
Standard San. Mfg. Co.	447 E. Jefferson	Phoenix, Arizona	Current.
Crane Company	233 S. 1st Ave	Phoenix, Arizona	Current.

Bank with Commercial National Bank of Phoenix, Arizona.

TRUE COPY OF ENVELOPE.

Phoenix Plumbing & Heating Co.	Postal cancellation
316 North Sixth Avenue	Phoenix
Phoenix, Arizona.	Aug. 14
	1. 5:30 PM
	1928
	A R I Z.

R. G. DUN & COMPANY

Heard Building

Phoenix, Arizona.

(Stamp)

This envelope contained statement of Phoenix Plbg. & Htg. Co.

Received by me 8/15 1928.

(Signature) Z. [159]

B.-522.
 PETITIONERS' EXHIBIT No. 27.
 In Evidence.
 PHOENIX PLUMBING & HEATING COMPANY,
 Phoenix, Arizona.

Work in Progress and Finished.
 February 15th, 1929.

Job.	Contract Amt.	Paid	% Complete	Bal. Due
Arizona Grocery Co.....	\$ 105.00	—	60%	105.00
Arizona Guarantee Mortgage Co.....	746.75	—	Not Started	746.75
Backowetz Apartment	3,700.00	—	65%	3,700.00
Buckeye Arizona School	5,635.50	\$ 5,462.50	Finished	173.00
State Insane Hospital	6,841.00	3,580.00	60%	3,261.00
Phoenix City Hall	22,374.00	12,375.00	80%	9,999.00
Episcopal Deanery	2,563.90	2,325.00	Finished	238.90
Washington School Building	695.00	—	50%	695.00
Dan Campbell Residence	1,530.00	—	50%	1,530.00

Job.	Contract Amt.	Paid	% Complete	Bal. Due
H. H. Green New Residence	\$1,723.97	\$1,700.00	95%	23.97
H. H. Green Old	469.00	—	60%	469.00
W. W. Knorpp Residence	1,640.40	1,230.30	90%	410.10
Mr. Dowell Residence	2,540.00	—	40%	2,540.00
E. J. Bennett Residence	3,898.30	2,200.00	80%	1,698.30
Lincoln Mortgage Co. Balance Due on 41 cottages now finished				15,435.92
Mesa Bank Building.....	5,228.00	1,582.50	75%	3,645.50
Patterson Residence	306.54	264.00	Finished	42.54
Grace Lutheran Church	594.50	297.25	Finished	297.25
Phoenix High School Stadium	16,116.50	15,469.90	Finished	646.60
Phoenix " " Library Bldg.	17,822.00	2,437.50	40%	15,384.50
Phoenix " " Heating Plant	27,819.00	12,580.00	85%	15,239.00
Phoenix Junior College Bldg.	8,424.00	3,787.50	70%	4,636.50
Dr. Shackelford Residence	564.00	—	50%	564.00
Tolleson Arizona School Bldg.	3,871.00	2,150.00	Finished	1,721.00

Job.	Amt. Contract	Paid	% Complete	Bal. Due
Mel Fickas Residence	\$1,069.00	—	50%	1,069.00
Marcus B. Kelley Residence	648.75	—	50%	648.75
Linn Lockhart Residence	4,461.00	1,937.50	80%	2,523.50
H. Keyfavar Residence	1,280.00	—	60%	1,280.00
Hoggan Residence	346.75	—	50%	346.75
Frank Bowman Residence	237.00	—	60%	237.00
Joe Samardo Residence	140.00	40.00	95%	100.00
Getney & Snell Residence	336.75	—	60%	336.75
Perry & Taylor Residence	491.00	—	Finished	491.00

Unpaid Balance.....\$90,235.58

Mr. D. L. Francis, Mgr., aided by figures from the wholesale houses on a very liberal estimate that it will require the sum of \$48,550.00 to cover all MATERIAL & LABOR necessary to complete all of the above work.

Signed—PAUL C. GEHRES,
Phoenix Plumbing & Heating Co.

The above is a true and correct statement of the work in progress and completed this fifteenth day of February, 1929.

B.-522.

PETITIONERS' EXHIBIT No. 18.

For Identification. [160]

B.-522.

PETITIONERS' EXHIBIT No. 28.

In Evidence.

Phoenix, Arizona, June 6, 1929.

For value received, the undersigned hereby sells, transfers, sets over and assigns to Crane Co. all his right, title and interest in and to his book accounts and claims of every nature against the following named persons in the following named amounts, to wit:

(\$1000.00 due from E. J. Bennett, Country Club Drive, Phoenix, Ariz.

(Pencil Notation) (800.00 due from Harry Tritle, No. Alvarado St., Phoenix.

Go after. not legible 24465 (500.00 due from O. P. Johnson, Verde Lane, Phoenix.

(800.00 due from Frank B. Schwentker, Alvarado & Monte Vista, Phoenix.

500.00 due from Marana Teacherage Building, Marana, Arizona. (Pencil Notation) Pd Jan 21

500.00 due from Dan Campbell, W. Cambridge St., Phoenix. (Pencil Notation) Paid 7/17/29

225.00 due from James Barnes, 1300 1606 Block W. Latham St., Lynwood Phoenix.

400.00 due from O. R. Bell, 917 No. 8th St., Phoenix.)

400.00
196.01 Pd.
) 7/31/29
203.99 Bal.
) due.

)
)
)
)
)

PHOENIX PLUMBING & HEATING CO..

By LEO FRANCIS,

Owner.

Approved:

CLIFF FRYBERGER,

Manager.

We, the above named, hereby consent to, accept and agree to the above named assignment.

Accepted by E. J. Bennett for the amount finally found due but not to exceed one thousand dollars.
June 2/1929.

E. J. BENNETT.

(Pencil Not.) Jas. W. Barnes amount \$225.00
6/9/29.

Petitioners' Exhibit No. 19 for Identification.
[161]

B.-522.

PETITIONERS' EXHIBIT No. 29.

In Evidence.

12-11-29.

Letter Head.

STANDARD SANITARY MFG. CO.

447 E. Jefferson Street,

Phoenix, Arizona.

June 7, 1929.

To whom it May Concern:

After reviewing assignments given by Phoenix Plumbing and Heating Company to Crane Company, covering the following jobs, in amounts as stated, to-wit:

\$1,000.00 due from E. J. Bennett, Country Club Drive, Phoenix, Arizona.

800.00 due from Harry Tritle, No. Alvarado St., Phoenix.

vs. Momsen-Dunnegan-Ryan Company et al. 209

500.00 due from O. P. Johnson, Verde Lane,
Phoenix.

800.00 due from Frank B. Schwentker, Alvarado
& Monte Vista, Phoenix.

500.00 due from Marana Teacherage Building,
Marana, Arizona.

500.00 due from Dan Campbell, West Cam-
bridge St., Phoenix.

225.00 due from James Barnes, 1300 Block W.
Latham Street, Phoenix.

400.00 due from O. R. Bell, 917 N. 8th Street,
Phoenix.

We do herewith release our rights, title and in-
terest in the above accounts, in the amounts, as stated,
and do herewith relinquish any and all lien rights
we may have in said jobs, except in any amount
above that which is entered against such jobs in this
instrument.

Yours truly,

STANDARD SANITARY MFG. CO.

By I. L. NIHELL.

I. L. NIHELL.

ILN: HL.

B.-522. Petitioners' Exhibit No. 20 for Identifi-
cation 12-11-29. [162]

B.-522.

PETITIONERS' EXHIBIT No. 30.

In Evidence.

12-11-29.

“COPY.”

ARMSTRONG, LEWIS & KRAMER,

Phoenix, Arizona.

Southern Surety Company of N. Y.

Los Angeles, Calif.

RE: CITY HALL PLUMBING CONTRACT—
PHOENIX PLUMBING & HEATING CO.

Gentlemen:

We are counsel for the Standard Sanitary Manufacturing Co. with offices in Phoenix, and we have before us the figures showing the status of the City Hall job.

There remains to be paid on the contract by the City of Phoenix to the Phoenix Plumbing and Heating Company the sum of \$8,700 and some odd dollars. The unpaid material bills for materials furnished and now installed in the City Hall, standing on the books of the Standard Sanitary Manufacturing Co. against the Phoenix Plumbing and Heating, amount to the sum of \$16,918.74.

Under the terms of the contract and bond of the Phoenix Plumbing and Heating Company which your company underwrote, your company is liable for the payment of this amount. There appears no possibility of the Phoenix Plumbing & Heating Co. paying the difference between the amount due on the

job and the amount due for materials furnished therefor; hence, we are compelled to make demand upon you for the payment of the \$16,918.74 due for materials installed in the building.

We would appreciate your early consideration of and decision, on this demand.

Yours very truly,

ARMSTRONG, LEWIS & KRAMER,

By FRANK J. DUFFY.

Petitioners' Exhibit No. 10 for Identification.

[163]

B.-522.

PETITIONERS' EXHIBIT No. 30.

In Evidence.

12-11-29.

Letter Head.

SOUTHERN SURETY COMPANY OF NEW
YORK,

1201 National City Bank Building,
Los Angeles, Calif.

August 8, 1929.

Phoenix Plumbing & Heating Co.,

316 North Sixth Ave.,

Phoenix, Arizona.

Atten: Mr. Fryberger.

Re: Bond 453393—Phoenix Plumbing & Heating
Company to City of Phoenix—Plumbing con-
tract in New City Hall Building at Phoenix
—LA #1578—28.

Gentlemen:

With reference to the above contract, we enclose

B.-522.

PETITIONERS' EXHIBIT No. 30.

In Evidence.

12-11-29.

“COPY.”

ARMSTRONG, LEWIS & KRAMER,

Phoenix, Arizona.

Southern Surety Company of N. Y.

Los Angeles, Calif.

RE: CITY HALL PLUMBING CONTRACT—
PHOENIX PLUMBING & HEATING CO.

Gentlemen:

We are counsel for the Standard Sanitary Manufacturing Co. with offices in Phoenix, and we have before us the figures showing the status of the City Hall job.

There remains to be paid on the contract by the City of Phoenix to the Phoenix Plumbing and Heating Company the sum of \$8,700 and some odd dollars. The unpaid material bills for materials furnished and now installed in the City Hall, standing on the books of the Standard Sanitary Manufacturing Co. against the Phoenix Plumbing and Heating, amount to the sum of \$16,918.74.

Under the terms of the contract and bond of the Phoenix Plumbing and Heating Company which your company underwrote, your company is liable for the payment of this amount. There appears no possibility of the Phoenix Plumbing & Heating Co. paying the difference between the amount due on the

job and the amount due for materials furnished therefor; hence, we are compelled to make demand upon you for the payment of the \$16,918.74 due for materials installed in the building.

We would appreciate your early consideration of and decision, on this demand.

Yours very truly,
ARMSTRONG, LEWIS & KRAMER,
By FRANK J. DUFFY.

Petitioners' Exhibit No. 10 for Identification.
[163]

B.-522.

PETITIONERS' EXHIBIT No. 30.

In Evidence.

12-11-29.

Letter Head.

SOUTHERN SURETY COMPANY OF NEW
YORK,

1201 National City Bank Building,
Los Angeles, Calif.

August 8, 1929.

Phoenix Plumbing & Heating Co.,
316 North Sixth Ave.,
Phoenix, Arizona.

Atten: Mr. Fryberger.

Re: Bond 453393—Phoenix Plumbing & Heating
Company to City of Phoenix—Plumbing con-
tract in New City Hall Building at Phoenix
—LA #1578—28.

Gentlemen:

With reference to the above contract, we enclose

copy of letter dated August 6th from Attorneys Armstrong, Lewis & Kramer, which is self explanatory.

We had hoped that you would be able to work out of your difficulties without any of the creditors making formal demand for the payment of their accounts. I wish you would write me in some detail what progress you have made since my talk with you in Phoenix, and whether you think it would be possible to reach a satisfactory adjustment with the Standard on some basis by which this creditor will look to you for payment.

You might have a talk with the Standard manager before writing me. I shall hope to hear from you by the middle of next week.

Yours very truly,

L. D. BARTLETT,

Claims Manager.

LDB:MB.

ENC:

Petitioners' Exhibit No. 10 for Identification.
[164]

B-522.

PETITIONERS' EXHIBIT No. 31.

In Evidence.

12-11-29.

To the Board of Trustees of Phoenix Union High
School District, Maricopa County, Arizona.
Gentlemen:

On the 18th day of October, 1928, I entered into a contract with your District wherein, among other

things, I agreed to the satisfaction and under the direction of your District and Lescher & Mahoney, the Architects for the District, to provide all the materials and perform all the work mentioned in the specifications and as shown upon the drawings prepared by said architects for the installation and completion of the plumbing, heating and ventilating in the library and classroom building located on property belonging to the District, bounded by Sixth, Seventh, Taylor and Van Buren Streets, in the City of Phoenix, Arizona, and for the faithful performance of which contract the District agrees to pay me the sum of \$18,828.00 as follows:

\$10,330.00 for the installation of the heating and ventilating and \$8,498.00 for the installation of the plumbing, payments to be made upon estimates and certificates of the architects upon the 1st and 15th days of each month for seventy-five per cent of the cost of materials furnished on the ground or placed in the building and labor performed thereon, the final payment of twenty-five per cent reserved from previous estimates or installment payments to be made when the building is completed and finally accepted by the District, and upon which contract there has been paid me up to this date approximately \$9,000.00. I wish to advise you that owing to unforeseen financial difficulties I have fallen in, the Standard Sanitary Manufacturing Company at Phoenix, Arizona, who has been furnishing me the materials to perform said contract now refuses to furnish me further materials for use in the completion of the contract, and in as much as I cannot obtain the necessary materials from any

other source to fulfil the contract with I have appealed to the American Bonding Company of Baltimore, the surety on my bond for the performance of said contract, to financially assist me in securing the necessary materials to complete the contract and in the circumstances, the American Bonding Company of Baltimore as the surety on my bond has consented to secure for me the materials necessary to complete the contract, as well as money necessary to pay the labor to properly install said materials provided I protect said surety for the materials which it will furnish me and the moneys to be paid by it for the labor to install said materials under the contract.

Therefore, in order to perform said contract and complete the same to the satisfaction of your District and said architects, and to protect said surety, I hereby authorize and empower you to pay over to the American Bonding Company of Baltimore, a corporation, the surety on my bond for the fulfillment of said contract, all moneys now due me or to become due to me under the terms of said contract and which will amount to approximately \$9,000.00 when said contract is completed, and I hereby authorize and empower said American Bonding Company of Baltimore to receipt for said Board of Trustees of Phoenix.

Union High School District—

[165] moneys in my name to your District and when so receipted for by said American Bonding Company of Baltimore it shall be deemed as my receipt therefor, and I hereby waive any and all

claim against your District for said moneys or any part thereof which may be paid to said American Bonding Company of Baltimore as above stated.

I also wish to advise you that I have and do now rescind and recall any and all assignments by me heretofore made of the moneys due and to become due under said contract to any and all persons, corporations, partnerships or associations, and direct and authorize you to ignore and disregard any such assignments whether the same have been heretofore or may hereafter be presented to you.

Signed LEO FRANCIS.

Phoenix, Arizona, August 6th 1929.

I, J. W. Laur, of Maricopa County, State of Arizona, do hereby swear that the above is a true and exact copy of the original letter.

J. W. LAUR.

Sworn and subscribed to before me, a notary public in and for the County of Maricopa, State of Arizona, this 3d day of December, 1929, at Phoenix, Arizona.

[Seal]

P. S. BASSFORD.

My commission expires Mar. 30, 1930.

B.-522. Petitioners' Exhibit No. 21 for Identification. [166]

B.-522.

PETITIONERS' EXHIBIT No. 32.

In Evidence.

12-11-29.

Letter Head.

PHOENIX PLUMBING & HEATING
COMPANY,

316 North Sixth Avenue,

Phoenix, Arizona,

May 7, 1929.

To Whom it May Concern:

We herewith assign all moneys now due us or to become due for Plumbing on the High School Library Building, Phoenix, Arizona, to the STANDARD SANITARY MFG. CO., 447 East Jefferson Street, Phoenix, Arizona; and do herewith instruct your Honorable School Board, Clerk of the Board, or any other party or parties to whom this may be addressed, to make payment of said moneys to the above named firm at the address given above, as said sums may become due.

Yours truly,

PHOENIX PLUMBING & HEATING CO.

By D. FRANCIS, Manager.

Witness to above signature:

PAUL C. GEHRES.

B.-522. Petitioners' Exhibit No. 22 for Identification. 12-11-29. [167]

B.-522.

PETITIONERS' EXHIBIT No. 32.

In Evidence.

12-11-29.

Letter Head.

PHOENIX PLUMBING & HEATING
COMPANY,

316 North Sixth Avenue,

Phoenix, Arizona,

May 7, 1929.

TO WHOM IT MAY CONCERN:

We hereby assign all moneys now due us or to become due us on Contract for Plumbing on the Phoenix Junior College Job, Phoenix, Arizona, to the STANDARD SANITARY MFG. CO., 447 East Jefferson Street, Phoenix, Arizona; and do herewith instruct your Honorable School Board, Clerk of the Board or other party or parties to whom this may be addressed, to make payment of said moneys to the above firm at the address given above, as said sums may become due.

Yours truly,

PHOENIX PLUMBING & HEATING CO.,

By D. FRANCIS,

Manager.

Witness to above signature:

PAUL C. GEHRES.

B.-522. Petitioners' Exhibit No. 22 for Identification. 12-11-29. [168]

B-522.

PETITIONERS' EXHIBIT No. 32.

In Evidence.

12-11-29.

Letter Head.

PHOENIX PLUMBING & HEATING
COMPANY,

316 North Sixth Avenue,

Phoenix, Arizona,

May 7, 1929.

To Whom it May Concern:

We herewith assign all moneys now due or to become due on Contract for Material and Labor on the High School Heating Plant, Phoenix, Arizona, to the STANDARD SANITARY MFG. CO., 447 East Jefferson Street, Phoenix, Arizona; and do herewith instruct the Honorable School Board, Clerk of the Board, or any other party or parties who may be designated to make payment of this money, to make payment of same to the above named firm at the address given, as such payments may become due.

Yours truly,

PHOENIX PLUMBING & HEATING CO.

By D. FRANCIS,

Manager.

Witness to above signature.

PAUL C. GEHRES.

B.-522. Petitioners' Exhibit No. 22 for Identification. 12-11-29. [169]

B.-522.

PETITIONERS' EXHIBIT No. 33.

In Evidence.

12-11-29.

Letter Head.

STANDARD SANITARY MFG. CO.

447 E. Jefferson Street,

Phoenix, Arizona.

April 26, 1929.

Board of Trustees,

Yuma High School,

Yuma, Arizona.

Att'n Clerk of the Board:

Gentlemen:

We hereby assign all moneys now due us or to become due us on Contract for Plumbing on the Yuma High School Gymnasium, Yuma, Arizona, to the STANDARD SANITARY MFG. CO., 447 East Jefferson Street, Phoenix, Arizona; and do herewith instruct your Honorable School Board, yourself, or any other party or parties to whom this may be addressed, to make payment of said moneys to the above-named firm at the address given above, as said sums may become due.

Yours truly,

PHOENIX PLUMBING & HEATING CO.

By LEO FRANCIS,

Owner.

Witness: HELEN LANGDON.

Petitioners' Exhibit No. 23 for Identification.

B.-522.

PETITIONERS' EXHIBIT No. 34.

In Evidence.

12-11-29.

Face of Exhibit:

Builders. Subdividers. Brokers.

LINCOLN MORTGAGE COMPANY,
Lincoln Built Homes.

No. 2489.

Phoenix, Arizona, June-8 '29.

Pay to the order of Phoenix Plumbing & Heating
Co. \$14000.00 Lincoln Mortgage Co.—Fourteen
Thousand Dollars *Dollars*.

LINCOLN MORTGAGE COMPANY.

M. E. WADDOUPS,

C. N. WYNN.

CITIZENS STATE BANK.

91-6.

Phoenix, Arizona.

HENRY O. DORMAN.

This voucher is a Payment in Full of the Within
Account and the Payee Accepts it as Such by En-
dorsement Below.

Endorse Here.

Phoenix Plumbing & Heating Co.

Cliff B. Freyberger, Mgr.

Petitioners' Exhibit No. 24 for Identification.

[171]

B.-522.

PETITIONERS' EXHIBIT No. 34.

In Evidence.

12-11-29.

(Back of Exhibit.)

LINCOLN MORTGAGE COMPANY,

214 North Central Avenue.

To Phoenix Plumbing & Heating Company—Dr.

Date	Detail		Amounts
6/8/29	Payments in full for plumbing on following jobs:		
#59 Crider #1	\$ 228.15	#60 Crider #2	\$230.82
#52 Statler #2	425.00	#43 Files	190.00
#57 Lewis	475.00	#48 Williams	175.00
#56 Clayton	800.00	#25 McGowan	371.38
#53 Peck	276.00	#63 Kimball	273.57
		#54 Radcliffe	

B.-522.

PETITIONERS' EXHIBIT No. 35.

In Evidence.

12-11-29.

BALANCE SHEET OF THE PHOENIX
PLUMBING AND HEATING COMPANY,
AS OF JULY 20th, 1929.

ASSETS.

Cash on hand.....	\$ 150.00
Accounts Receivable	3,935.92
Contracts Receivable	45,119.90
Inventory	4,850.00
Labor furnished on Safford Hotel job..	
(Estimated)	1,000.00
Deficit	20,436.25
	<hr/>
Total.....	\$75,492.07

LIABILITIES.

Accrued Salaries	\$ 107.50
Payroll week ending July 20, 1929.....	550.00
Estimated Labor to complete contract...	1,395.00
Estimated material to complete contracts.	13,850.00
Notes payable bank.....	6,100.00
Accounts payable miscellaneous.....	15,548.57
Accounts payable Standard Sanitary	
Mfg. Co.	37,941.00
	<hr/>
Total.....	\$75,492.07

Petitioners' Exhibit No. 13 for Identification.

B.-522.

PETITIONERS' EXHIBIT No. 36.

In Evidence.

Filed Dec. 12-1929.

Letter Head.

STANDARD SANITARY MFG. Co.

447 E. Jefferson Street,

Phoenix, Ariz.

December 12, 1929.

Mr. Frank Duffy,
Attorney at Law,
Phoenix, Arizona.

Dear Sir:

With reference to the following items appearing as credits on the account of the Phoenix Plumbing and Heating Company:

Item #1—August 3, 1929, amount.....	\$166.79
Item #2—August 6, 1929, amount.....	300.00
Item #3—August 8, 1929, amount.....	1254.00
Item #4—August 10, 1929, amount.....	343.75
Item #5—August 16, 1929, amount.....	1000.00

Item #1 is cash received and covering miscellaneous small repair jobs.

Item #2 is remittance received from the Phoenix Plumbing and Heating Company on the John Mason Ross Job. The same applies to item #4. A release has been issued on this job.

Item #3 covers remittance received from the Phoenix Plumbing and Heating Company on the O. P. Johnson Job, which job has just been finished and will of necessity have to be liened, unless we

receive a remittance for the balance immediately.

Item #5 is an advance amount for materials to be used in the Safford Hotel Job, paid by the McGinty Construction Company.

Trusting the above information is satisfactory, we are

Yours truly,
STANDARD SANITARY MFG. CO.

By R. C. BOWER,
R. C. BOWER,
Asst. Mgr.

RCB:HL. [174]

B.-522.

PETITIONERS' EXHIBIT No. 37.

In Evidence.

Filed 12-27-29.

THIS AGREEMENT made and entered into this 11th day of July, 1929, between LEO FRANCIS, doing business under the firm name and style of PHOENIX PLUMBING & HEATING CO., of Phoenix, Arizona, hereinafter referred to as assignor, and L. W. FRYBERGER, of Phoenix, Arizona, hereinafter referred to as assignee, and the creditors of said assignor, consenting in writing to this agreement, hereinafter referred to as the creditors.

WITNESSETH:

That said assignor for and in consideration of the covenants and agreements to be performed by the other parties hereto, as hereinafter contained, and of the sum of One Dollar (\$1.00) to the assignor in hand paid by the assignee, receipt whereof

is hereby acknowledged, does by these presents grant, bargain, sell, assign and transfer unto said assignee, his heirs and assigns forever, all of the property of the assignor of every kind and nature, and wheresoever situated, both real and personal, and any interest or equity therein not exempt from execution, including particularly all of the stock of merchandise, furniture, fixtures, bills receivable, accounts receivable, situated in or connected with or pertaining to the plumbing and heating business now owned, conducted and operated by the assignor at 316 North Sixth Avenue, Phoenix, Arizona, and including choses in action, insurance policies, cash on hand, and all other assets of any nature whatsoever.

It is understood, however, that heretofore and at various times during the past eight or ten months assignor above named has in various instances assigned and transferred to various of his creditors accounts receivable or certain interests [175] in accounts receivable owned by said assignor, said creditors having furnished materials on jobs being completed by assignor; it is hereby expressly understood that the following assignments of claims due said assignor for work done and materials furnished in the following mentioned contracts are recognized as valid, and are to be paid to the assignees, and constitute no part of the assets of said assignor:

Job	Assigned to:	Amount.
E. J. Bennett.....	Crane Co.....	\$1000.00
Harry Tritle.....	Crane Co.....	800.00
O. P. Johnson.....	Crane Co.....	500.00
Frank B. Schwentker..	Crane Co.....	800.00
James Barnes.....	Crane Co.....	225.00
O. R. Bell.....	Crane Co.....	400.00
Dan Campbell.....	Crane Co.....	500.00
Junior College.....	Standard Sanitary Mfg. Co...	2257.20
Library Building.....	Standard Sanitary Mfg. Co...	9410.12
State Insane Asylum..	Standard Sanitary Mfg. Co...	2815.30
City Hall.....	Standard Sanitary Mfg. Co...	8707.85
Yuma School.....	Standard Sanitary Mfg. Co...	2717.00
Central Heating Plant.	Standard Sanitary Mfg. Co...	3507.10

and it being agreed that all creditors having or claiming to have liens on account of work done or materials furnished by said assignors waive their liens.

Said assignee is to receive the said property, conduct the said business should he deem it proper, and he is hereby authorized at any time after the signing hereof by the said assignor, to sell and dispose of the said property on such time and terms as he may see fit, and he is to pay to said creditors *pro rata*, according to the several indebtednesses due to them from said assignor, the net proceeds arising from the conduct of said business and sale and disposal of said property, after deducting all moneys which said assignee may at his option pay for the discharge of any lien on any of said property, and any indebtedness which under the law is entitled to priority of payment, also all expenses incurred.

In consideration of the premises parties of the third [176] part agree to accept their *pro rata* portion of the net recoveries of this estate as paid to them by said assignee, in full payment and satisfaction of their several indebtednesses, and release said assignor from all claims and demands that they now have against said assignor, provided, however, that this agreement to accept said *pro rata* and release said assignor is to become inoperative and void at the option of any of the third parties without notice if anything intervenes to prevent the payment of said *pro rata* to said third parties by any act of said assignor or any creditor of said assignor.

IN WITNESS WHEREOF the assignor and assignee have hereunto set their hands the day and year first above written, and the joining of said creditors to be evidenced by their separate consent in writing, and by filing of their claims with the assignee.

_____,
Assignor.

_____,
Assignee.

State of Arizona,
County of Maricopa,—ss.

On this — day of July, 1929, before me, a Notary Public in and for the County of Maricopa, State of Arizona, personally appeared Leo Francis known to me to be the person whose name is subscribed to the within and foregoing instrument,

and acknowledged to me that he executed the same for the purposes therein expressed.

_____,
Notary Public.

My commission expires: _____. [177]

B.-522.

ALLEGED BANKRUPTS' EXHIBIT No. 1.

In Evidence.

Filed 11-21-29.

POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS:

That I, Leo Francis of Calhoun, in the County of LeFlore and State of Oklahoma, have made, constituted and appointed, and by these presents do make, constitute and appoint Dee Francis of Phoenix, Arizona, my true and lawful attorney, for me and in my name place and stead, and to my use, to conduct my plumbing business now located at 316 North 6th Avenue, Phoenix, Arizona, to buy new stock, contract and carry on the business the same as if I was present and acting in my own person, giving my said attorney full power to everything whatsoever, requisite and necessary to be done in the conduct of said business as fully as I could do if present and acting in my own proper person.

Hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereto set my hand and seal this the 9th day of April, 1928.

LEO FRANCIS.

ACKNOWLEDGMENT.

State of Oklahoma,
County of LeFlore,—ss.

Before me, a Notary Public in and for said County and State on this the 9th day of April, 1928, personally appeared Lee Francis, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal this the 9th day of April, 1928.

[Seal]

OLIN BURTON,
Notary Public.

My commission expires: 2/16 1932. [178]

B.-522.

ALLEGED BANKRUPTS' EXHIBIT No. 2.

In Evidence.

11-27-29.

Phoenix, Arizona.

October 5, 1927.

This is to certify that I have this date received from Dee Francis the sum of \$1,600.00 the same to apply on payment of Plumbing Business, stock in trade, fixtures, equipment and good will of said plumbing business located at 316 North Sixth Avenue, Phoenix, Arizona. Said sale to be made in accordance with an agreement which I have this date signed in which agreement Leo Francis agrees to

purchase said plumbing business and fixtures aforesaid.

WM. REMSBOTTOM. [179]

B.-522.

ALLEGED BANKRUPTS' EXHIBIT No. 3.

In Evidence.

11-27-29.

BILL OF SALE.

KNOW ALL MEN BY THESE PRESENTS:

That Wm. Remsbottom, the party of the first part, for and in consideration of the sum of Ten Dollars and other valuable consideration *Dollars* lawful money of the United States of America, to him in hand paid by Leo Francis the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, and his heirs, executors, administrators and assigns —666

the plumbing business, stock in trade, fixtures and equipment used in said plumbing business, together with the good will of said plumbing business; said plumbing business, stock in trade, fixtures and equipment being located at 316 North Sixth Avenue, Phoenix, Arizona;

TO HAVE AND TO HOLD the same to the said party of the second part, his heirs, executors, administrators and assigns forever; and the said party of the first part does for his heirs, executors, administrators and assigns, covenant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, to warrant and defend the sale of the said property, goods and

chattels hereby made unto the said party of the second part, his heirs, executors, administrators and assigns, against all and every person or persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF I have hereunto set my hand the 14th day of October, A. D. 1927.

WM. REMSBOTTOM. [180]

B.-522.

ALLEGED BANKRUPTS' EXHIBIT No. 3.

In Evidence.

11-21-29.

Reverse of Exhibit.

State of Arizona,
County of Maricopa,—ss.

Before me, _____, a Notary Public in and for the county of Maricopa, State of Arizona, on this day personally appeared Wm. Remsbottom, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, A. D. 1927.

[Seal]

D. E. WILSON,
Notary Public.

My commission expires Feb. 6, 1930.

State of Arizona,
County of Maricopa,—ss.

I (or we) hereby declare on oath that the within named Wm. Remsbottom, party of the first part, is (or are) the sole owner of the chattels set out in

the within and foregoing bill of sale, and that said chattels are clear, free and unincumbered.

Witness my hand this 14th day of October, A. D. 1927.

[Seal]

WM. REMSBOTTOM.

Subscribed and sworn to before me this 14th day of October, A. D. 1927.

My commission expires Feb. 6, 1930.

D. E. WILSON,
Notary Public. [181]

B.-522—Page 2.

ALLEGED BANKRUPTS' EXHIBIT No. 3.

In Evidence.

Reverse of Exhibit.

No. ———.

BILL OF SALE.

Short Form.

From

To

Dated ———, 192—.

Report of Special Master. Filed Feb. 18, 1930.
C. R. McFall, Clark United States District Court
for the District of Arizona. H. F. Schlittler, Dep-
uty Clark. [182]

RESPONDENTS' EXHIBIT "A."

For Identification.

(COPY.)

PHOENIX PLUMBING AND HEATING COMPANY.

June 22, 1929.

ASSETS:

Cash on Hand	\$2037.45	
Cash in Bank (Overdraft).	907.54	\$ 1129.91
		<hr/>
Contracts Receivable	47400.64	
A/C Rec. Since Jan. 1, 1929	2327.96	
A/C Rec. Prior Jan. 1, 1929	1562.02	
Due from Others	850.00	
Inventory	5000.00	
		<hr/>
		\$58270.53

LIABILITIES:

Accounts Payable	\$46,451.74
Notes Payable	6,100.00
Net Worth	5,718.79
	<hr/>

\$58270.53

B.-522.

RESPONDENTS' EXHIBIT "B."

In Evidence.

Face of Exhibit.

Phoenix, Arizona, May 15, 1929.

To the Commercial National Bank of Phoenix,
Arizona.

I hereby make application for a loan of \$2,000.00
we
payable 15 days after date on our name with collat-
my
eral as follows:

PHOENIX PLUMBING & HEATING CO.

Purpose of Proceeds:

Payroll

Back of Exhibit.

Present Loan \$ _____

Present Contingent \$ _____

Present Rate:

High Loan: 3-3-27. \$7,000.00

Average Balances:

192— \$ _____

192— \$ _____

Total Deposits

192— \$ _____

192— \$ _____

Financial Statement _____

Quick Assets, \$ _____

Current Debts, \$ _____

Stockholder? _____

Remarks: _____

Approved: T. G. Norris.

I. Rosenzweig.

G. M. N.

Petitioners' Exhibit No. 24 for Identification.
[184]

B.-522.

RESPONDENTS' EXHIBIT "C."

In Evidence.

Letter Head

PHOENIX PLUMBING & HEATING COM-
PANY,
316 North Sixth Avenue.
Phoenix, Arizona.

March 5th, 1929.

Standard Sanitary Mfg. Co.,
447 East Jefferson St.,
Phoenix, Arizona.

Gentlemen:

You are by this instrument authorized to draw on Lincoln Mortgage Co., of this city in the amount of Fourteen Thousand One Hundred Ninety Six Dollars Seventy Seven Cents, (\$14,196.77).

Which sum represents money due this firm for work and materials furnished in the construction of various houses and store buildings owned by The aforesaid Lincoln Mortgage Co.,

This assignment effective this date.

PHOENIX PLUMBING & HEATING CO.

By D. FRANCES.

Respondents' Exhibit "C" for Identification.
[185]

B.-522.

RESPONDENTS' EXHIBIT "D."

In Evidence.

12-11-29.

Letter Head

STANDARD SANITARY MFG. CO.,

447 E. Jefferson Street,

Phoenix, Ariz.

December 5, 1928.

TO WHOM IT MAY CONCERN:

We hereby assign all moneys now due or to become due us on contract for plumbing and heating on State Hospital Job, now under construction, on Tempe Road near Phoenix, Arizona, to the STANDARD SANITARY MFG. CO., 447 EAST JEFFERSON STREET, PHOENIX, ARIZONA; and do herewith instruct the general contractor on this job or other party or parties who are or may be designated to pay out moneys on construction work on this job, to make payment of said moneys to the above named firm at the address given above as said sums may become due.

Yours truly,

PHOENIX PLUMBING & HEATING CO.

By D. Francis,

Manager.

WITNESS:

FRANK J. CAMPBELL—12/5/28.

I. L. NIHELL.

I herewith accept above assignment in the amount

of amount due and agree to make payment of money as stated herein.

W. H. BROWN.

Signed—June 23, 1929. Date _____.

Witness _____.

Respondents' Exhibit "D" for Identification.
[186]

B.-522.

RESPONDENTS' EXHIBIT "E."

In Evidence.

12-11-29.

Letter Head

STANDARD SANITARY MFG. CO.,

447 E. Jefferson Street,

Phoenix, Ariz.,

November 5, 1928.

TO WHOM IT MAY CONCERN:

We herewith assign all moneys now due us or to become due us on Contract for Plumbing on the Phoenix City Hall Job, Phoenix, Arizona, to the STANDARD SANITARY MFG. CO., 447 East Jefferson Street, Phoenix, Arizona, and do herewith instruct the Honorable Commissioners and City Treasurer, City of Phoenix, or other party or parties to whom this is addressed to make payment of said moneys to the above named firm at the address given.

Yours truly,

PHOENIX PLUMBING & HEATING CO.

By C. D. FRANCIS—11-5-1928.

Manager.

WITNESS:

FRANK J. CAMPBELL—11-5-1928.

I. L. NIHELL—Nov. 5-1928. [187]

Respondents' Exhibit "E" for Identification.
[187]

[Title of Court and Cause.]

STATEMENT OF EVIDENCE.

BE IT REMEMBERED, that the above-entitled cause came on regularly to be heard before the Honorable R. W. Smith, sitting as a Special Master under an order of reference issued out of this court, and that beginning on November 20, 1929, at the hour of 10 o'clock A. M. in the courtroom of the Referee in Bankruptcy, 315 Ellis Building, Phoenix, Arizona, there being present, either in person or by counsel, the following: Walter J. Thalheimer, Receiver; Miss Alice M. Birdsall, counsel for petitioning creditors; O. E. Schupp, counsel for Leo Francis, one of the alleged bankrupts; E. O. Phlegar, counsel for D. L. Francis and Lyon Francis, two of the alleged bankrupts; Armstrong, Lewis & Kramer, by Frank J. Duffy, counsel for Standard Sanitary Manufacturing Company, intervening creditor; [188] Earl F. Drake, of Townsend & Drake, counsel for Crane Company, intervening creditor; W. H. Hayward, representing United States Department of Justice; and

BE IT REMEMBERED, that the said Master under and by virtue of the authority vested in him

by this Court, did thereupon proceed to hear testimony introduced by the petitioning creditors and by the intervening creditors; and

BE IT REMEMBERED, that Helen Burns was duly sworn as court reporter and

BE IT REMEMBERED, that the counsel for petitioning creditors thereupon called as witnesses the following: Walter J. Thalheimer; Lama Hedgpeth; Mrs. John Dennett, Jr.; Walter S. Wilson; Leo Francis; C. L. Lane; David Montgomery; Charles Asche; Lee Fretz; H. Fliedner; Dee Francis; Leo Francis; Thos. W. Nealon; C. B. Freyberger; Jerrie Lee; Howard O. Workman; W. K. Fetter; Frank McNichol; O. E. Schupp; J. G. Wagner; I. L. Nihell; Dorothy Dorrell; Fred Blair Townsend;

Who being first duly sworn testified in the manner set forth in the following pages:

STIPULATION.

That petitioning creditors were creditors of Phoenix Plumbing & Heating Company in amounts specified in excess of Five Hundred (\$500.00) Dollars.

That all three alleged bankrupts were within the requirements of the Act as to domicile, and the jurisdictional time within the County. That principal place of business was in Maricopa County for more than six months prior to date of petition.

The MASTER.—I think from my hasty glance through the pleadings here, that the issues should be clearly defined. You will please define the issues that are to be tried in this proceeding. [189]

Miss BIRDSALL.—The petitioning creditors allege that Leo Francis, Lyon Francis and D. L. Francis are co-partners, doing business under the name of the Phoenix Plumbing & Heating Company, and owing debts in excess of \$1,000; that petitioning creditors have accounts for amounts greater than \$500 against the same; then the petition sets forth certain acts of bankruptcy, an allegation that the partners are insolvent; that the Phoenix Plumbing & Heating Company and each of said partners are insolvent, and that while insolvent they committed certain acts of bankruptcy, and that each of said alleged bankrupts participated in such acts of bankruptcy.

The first act was on June 6th, when the partnership and members transferred to Crane Co. eight certain accounts which are specified in the petition; that this was done while they were insolvent and with the intent to prefer Crane Co. over other creditors, coming under the second section of the Bankruptcy Act.

Another act of bankruptcy was transferring, at a time subsequent to June 1st, money in the amount of \$4,000, and with intent to prefer such creditor.

That on May 7th the alleged bankrupts transferred to the Standard Sanitary Manufacturing Company property enumerated as certain accounts or contracts receivable, covering three different jobs; it is alleged that all of these transfers were made with the intent to prefer these creditors; that they were made while the alleged bankrupts were insolvent and within a period of four months;

it is alleged that none of the instruments by which assignments were made were recorded and with no notice of it being given to creditors. [190]

Another act of bankruptcy is the transfer of money to the Standard Sanitary Manufacturing Company in the amount of \$13,000 subsequent to June 1st; another act is that on another date, within four months, the bankrupts transferred \$44.50 to the Fred Noll Tire Service, while they were bankrupt.

Now, in answer to that the Standard Sanitary Manufacturing Company has filed an amended answer here setting up or admitting most of the jurisdictional facts; admitting it is a partnership and admitting that all of the alleged acts of bankruptcy were participated in by the members, but averring that the Phoenix Plumbing & Heating Company, at the times mentioned in the petition and at all times up to the filing of the petition, was a solvent, going concern.

Crane Co. answers, putting in issue the same thing. They allege it is a solvent, going concern.

I am not going into the other matters. Lyon and D. L. Francis admit the allegations in regard to insolvency and I think the jurisdictional facts set up that the petitioning creditors owe claims in the amounts alleged, but merely allege that they are not partners in the company; Leo Francis admits the insolvency and admits his willingness to be adjudged a bankrupt, both personally and as the Phoenix Plumbing & Heating Company.

I think that covers the matters that are at issue.

Mr. DUFFY.—There is also the issue of the dates of assignment. We deny the allegations in regard to the assignment of the Lincoln Mortgage Company matter, and we also deny the dates of the assignments in the other cases where it is set up positively that on a certain date the assignment was made. The issues here are, first, the insolvency of the Phoenix Plumbing [191] & Heating Company at any time prior to the date of the petition; and, second, the issue as to these assignments which are set up by Miss Birdsall as acts of bankruptcy. Our contention is that they were not made at the time she sets out in her petition; they were not, in truth and in fact, assignments, and there was no money received by the creditors named under these assignments; the major issue is insolvency, and the other is the dates of these assignments.

Miss BIRDSALL.—I believe the main act is the insolvency at the time alleged; the other matters will come out.

Mr. DUFFY.—Well, I want this clearly understood. This petition in involuntary bankruptcy here sets up that on certain specified dates certain assignments were made at a time when the Phoenix Plumbing & Heating Company was insolvent, and that these assignments constituted preferences and acts of bankruptcy. Now, as I understand it, the burden is on the petitioning creditors to show that at the times and places alleged in the complaint, this concern was insolvent, and that these assignments were made at the dates stated, and that they were within four months prior to the filing of the

petition. I am in a position to prove that some of these things set up were not assigned at all because of the fact that there were prior assignments, and also that the dates of the assignments which are mentioned here were at such times as to be beyond the consideration of this court, and that this court has no jurisdiction over them under this petition here. This is very material in the matter of the Lincoln Mortgage Company, because if it turns out that the Lincoln Mortgage Company assignment was made some six or eight months prior to this petition, this court has no jurisdiction, and this petition must fail by reason of [192] that fact. Therefore the dates of the assignments and the condition of this company at that time are just as important as the solvency of the Phoenix Plumbing & Heating Company.

Miss BIRDSALL.—Referring to Mr. Duffy's own answer, he admits in paragraph III of his answer "that a certain assignment was made on that date."

Mr. DUFFY.—It is true there was one, but not the ones I refer to.

Miss BIRDSALL.—These matters are in the pleadings themselves. So far as the Lincoln Mortgage Company is concerned, there is no allegation made that there was an assignment of the amounts due; there is an allegation in the creditors' petition that about June 1st, or subsequent thereto, these alleged bankrupts transferred a portion of their property, to wit, \$13,000.00 in cash, to the Standard Sanitary Manufacturing Company.

But as I said, I am not going to stipulate as to the issues that may be raised during these proceedings.

The MASTER.—That is what I want in a general way,—the question of solvency or insolvency, the question of the partnership liability on the part of the two alleged partners.

Mr. DUFFY.—There is a clear-cut issue in the matter of the Lincoln Mortgage Company. It is alleged that this was transferred on the 5th of June, and we contend that it was in March,—this question of payment between the Lincoln Mortgage Company and the Standard Sanitary Manufacturing Company.

The MASTER.—Do your answers deny the allegations of assignment [193] made in the petition?

Mr. DUFFY.—So far as the Lincoln Mortgage Company is concerned. We set up that this Lincoln Mortgage Company account was assigned on the 5th of March, and that it then became their property, and the date of delivery is immaterial; the date of the assignment is what counts. And in rebuttal there will be certain other matters in regard to these assignments; there was an assignment on the 7th day of May on these three small jobs, but there is evidence in regard to that.

The MASTER.—I think from the nature of the contentions of counsel that the remainder of the questions involved in the petition will become issues.

Mr. DRAKE.—Crane Co. was served with *subpoena duces tecum* to produce books and records

covering a period of ten months. The first items that were desired related to the account of Crane Co. with the Phoenix Plumbing & Heating Company and these partners, showing the various debits and credits. In response to that subpoena we have here Mr. Wagner, the head bookkeeper and credit man of Crane Co. with an accounts receivable ledger, which is not the original book of entry but the book to which the accounts were transferred; to bring in all the books would mean to bring in about twenty-five volumes; to trace down the original entries would require a week's time so voluminous were the records, not only with these people but with other concerns. This book of secondary entry of accounts receivable showing debits and credits is here. These books of entry in which appear entries of materials furnished for various jobs mentioned here, especially the Lincoln Mortgage Company jobs,— [194] Mr. Wagner says that to trace down these original deliveries or charges for each of these, show the deliveries, etc., would require a single man's time for a period of thirty days. Mr. Wagner is here and can be examined by Miss Bird-sall in support of what I have said. If these books are desired, they will be brought in, but we seriously doubt their usefulness because of the fact that entries are scattered through these twenty-five books from day to day over a period of ten months, and if this court is going to attempt to ferret out,— for some reason the materiality of which we do not know,—a fairly accurate statement of the account of Crane Co. as to what job and when delivered,

this court will be in session for thirty days. We stand ready to meet the orders of the court. I could not comply with this subpoena, and I wished to state the reason why.

Mr. DUFFY.—Much the same situation exists with regard to the Standard Sanitary. The accounts involved in the *subpoena duces tecum* go over a long period of time, and we have endeavored so far as possible, to get as complete a record as we could, and we have also gone to the trouble of sending to San Antonio for a master sheet for the period covered by this subpoena, but it is not as complete as could be wished and it is so complicated, we are satisfied that if it is desired to go through these items one by one it would take as long, because they are dealing over a period of years and they had all kinds of jobs. We have all of the jobs here segregated so far as we could. We have been working with the local representatives ever since the subpoena was served and we have here as much as we could get, but there are a number of things which the subpoena asked for which I am satisfied are not material; we want to confine this to the questions at issue if possible.

The MASTER.—That may be determined during the progress of the hearing. [195]

TESTIMONY OF WALTER J. THALHEIMER,
FOR PETITIONING CREDITORS.

WALTER J. THALHEIMER, called by petitioning creditors and examined by Miss BIRD-SALL, testified:

(Testimony of Walter J. Thalheimer.)

I am Receiver for the Phoenix Plumbing & Heating Company, appointed August 17, 1929, qualified at once, am still Receiver. I have the books of the Phoenix Plumbing & Heating Company from Lee's office. Mr. Leo Francis told me where they were. The books have been in my possession since and are here now.

This is the Ledger of Accounts Payable. (Received and marked Petitioners' Exhibit 1 for identification.)

This is Accounts Receivable. (Received and marked Petitioner's Exhibit 2 for identification.)

Here is Ledger of Contracts Receivable. (Received and market Petitioners' Exhibit 3 for identification.)

This is Weekly Time Book. (Received and marked Petitioners' Exhibit No. 4 for identification.)

The time book goes back to week ending July 21, 1928; the Accounts Receivable go back quite a ways. I presume they have been carried along; it goes back into 1928. There is an entry on this Contracts Receivable Book of March 14, 1928. On the Cash Book there is a notation as to when the accounts start. On the Accounts Payable the first entry is "April 22, 1929." The notation there says "Forward, April 22."

Witness produces other books as follows:

This is Cash Book or rather receipts and expenses. First entry October 1, 1927. (Received

(Testimony of Walter J. Thalheimer.)
and marked Petitioners' Exhibit 5 for identification.)

Here is another cash book from April 22, 1929, to July 30, 1929. (Received and marked Petitioners' Exhibit 6 for identification.) There is a notation on this "Day after explosion—cash in bank—cash on hand." The entries start [196] from April 22.

Here is check book; first date, May 18, 1929; last one, August 15, 1929. (Received and marked Petitioners' Exhibit 7 for identification.)

Here is another check book. (Received and marked Petitioners' Exhibit 8 for identification.)

Here is book which seems to be entries of different jobs and material that went into that which went back to 1928. I don't think there is anything later than that. It is labor contracts and extras. (Received and marked Petitioners' Exhibit 9 for identification.)

I will produce a deposit book later. I have here a letter written to the Phoenix Plumbing & Heating Company by the Southern Surety Company. (Received and marked Petitioners' Exhibit 10 for identification.)

I have an unsigned contract of assignment dated July 11, 1929. (Received and marked Petitioners' Exhibit 11 for identification.)

I found no live contracts when I took over the books and papers. I made an inventory. The property consisted of plumbing supplies, fixtures and fittings. I don't know the value as no appraisal was made. There were some office fixtures and

(Testimony of Walter J. Thalheimer.)

three auto trucks. On the premises I found typewriters, safe, check protectors, steel filing cabinet, swivel chairs, table, rocker, typewriter stand, ceiling fan, counters, T-square, triangle, etc.; three trucks, Chevrolet, Ford, Star; another truck in possession of Goodman, who claims it under conditional sales contract. The accounts receivable were \$6,016.45 according to books. I have tried to collect same since August 17, and have collected only \$235.32. Many people say [197] the accounts are paid, others that the accounts are not correct, claiming they owe less amount, etc. I don't know actual value of accounts. Only one out of ten have answered my demand letters. I find no credits on books as claimed by people. I don't think accounts are worth \$6,000.00 by any means. Contracts receivable on books amount to \$44,898.91. Some have been taken over by bonding companies before I was appointed. I collected \$97.61 from Hogan & Farmer. That's all I have collected. The Bachowetz apartments contract is included in \$48,000 scheduled and shows on the books for \$3,700.00. I know the first mortgagee has brought suit to foreclose the mortgage. He made me a party to action. The Bachowetz account, from the records, is a total loss. (Witness produces check stub and bank-book which is received and marked Petitioners' Exhibit 12 for identification.)

TESTIMONY OF LAMAR HEDGPETH, FOR
PETITIONING CREDITORS.

I am Deputy County Recorder of Maricopa County. I have here book 2 of Partnerships, of Maricopa County, State of Arizona, on page 144 there is the following:

“Certificate of Co-partnership

“We, the undersigned, do hereby certify that we are partners, transacting a general plumbing business in the city of Phoenix, Arizona, under the fictitious name and style of Phoenix Plumbing and Heating Company. That the principal place of said business is at #316 North 6th Avenue, Phoenix, Arizona, and that the names in full of all the members of said partnership and their respective residences, are as follows, to-wit:

Dee L. Francis 88 Mitchell Drive, Phoenix,
Ariz.

Leo Francis 1109 Diamont St., Phoenix, Ariz.

Lyon Francis 14 South 20th Ave., Phoenix,
Ariz.

“IN WITNESS WHEREOF, we have hereunto set our hands and seals this 27th day of December, 1928.

“D. L. FRANCIS.

“LEO FRANCIS

“LYON FRANCIS. [198]

“State of Arizona,

“County of Maricopa,—ss.

“Before me, Harry F. Bringhurst, a Notary Public in and for the County of Maricopa, State of Arizona, on this day personally appeared Dee L. Francis, Leo Francis and Lyon Francis known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purpose and consideration therein expressed.

“(Seal)

HARRY F. BRINGHURST,

“Notary Public.

“My commission expires: June 12, 1931.

“Filed and recorded at the request of C. F. Dains, December 28, 1928, at 3:12 P. M.”

Turning to index of letter “P” and reading index into record. (Witness reads all of index under letter “P,” showing only one Phoenix Plumbing & Heating Company reference.) The index gives the names of the individuals after Phoenix Plumbing & Heating Company: “D. L., Leo & Lyon Francis, p. 144-43452.” I have read all that index of “P’s” and that record is of partnerships. The first entry in this book is April 20, 1922, and the last is March 22, 1929. It covers the record of partnership to date. The book is not full.

I have book 7 of Mechanics’ Liens, Maricopa County, Arizona; on page 596 is Phoenix Plumbing & Heating Company vs. Walter Bachowetz & Rose B., his wife.

(Testimony of Lamar Hedgpeth.)

“Labor and Material Men’s Lien.”

A. (Reading:)

“Phoenix Plumbing & Heating Company vs. Walter Bachowetz and Rose Bachowetz, his wife.

“NOTICE AND CLAIM OF LIEN.

“State of Arizona,

“County of Maricopa,—ss.

“The Phoenix Plumbing & Heating Company (a co-partnership) by Leo Francis, Manager, being first duly sworn, deposes and says:”—

A. (Reading:) Signed “Phoenix Plumbing & Heating Company, by Leo Francis, Manager.

“Subscribed and sworn to before me this 2nd day of July, 1928. [199]

“(Seal)

MARJORIE KINGSBURY,

“Notary Public.

“My commission expires January 29, 1929.”

A. (Reading:) “Filed and recorded at the request of Phoenix Plumbing & Heating Company, July 3, 1928, at 2:46 P. M.”

It is in amount of \$2,560.52. On page 577 of Book 7, of Mechanics’ Liens is the following:

A. (Reading:) “Labor and Material Men’s Lien. Phoenix Plumbing & Heating Company vs. J. W. Walker.

“NOTICE AND CLAIM OF LIEN.”

A. (Reading:) “Phoenix Plumbing & Heating Company, by D. L. Francis, owner and manager, being first duly sworn, deposes and says”—

(Testimony of Lamar Hedgpeth.)

“Notice and Claim of Lien.

“Phoenix Plumbing & Heating Company vs. Mrs. Nannie McFall. Phoenix Plumbing and Heating Company (a co-partnership) by D. Francis, Manager”—

A. Signed “Phoenix Plumbing & Heating Company, a co-partnership by D. Francis, Manager.”

A. “Subscribed and sworn to before me this 21st day of February, 1929.

“(Seal)

MARJORIE K. SMITH,

“Notary Public.

“My commission expires Jan. 31, 1933.”

A. “Filed and recorded at the request of the Phoenix Plumbing & Heating Company, on February 21, 1929, at 3:31 P. M.”

TESTIMONY OF MRS. JOHN DENNETT, JR.,
FOR PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

I am Louise Gage Dennett, Clerk, Board of Education, and am custodian of contract between High School District and Phoenix Plumbing & Heating Company, a co-partnership, dated September 5, 1928, which I have here. [201]

(Contract in Evidence, Ex. No. 1, Petitioning Creditors.)

Certified copy substituted by stipulation.

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PETITIONERS' EXHIBIT No. 1.

In Evidence.

11-20-29.

PLUMBING CONTRACT.

THIS AGREEMENT made and entered into this the 5th day of September, 1928, by and between D. L. Francis, Leo Francis and Lyon Francis, all of Phoenix, Arizona, a co-partnership, doing business under the firm name of Phoenix Plumbing and Heating Company, hereinafter designated the Contractors, the first party, and Phoenix Union High School District, Maricopa County, Arizona, by its Board of Education, hereinafter designated the Owner, the second party, WITNESSETH:

That in consideration of the covenants and agreements herein contained to be and by them kept and performed, it is hereby agreed by and between the parties above named as follows, to-wit:

1. The Contractors, to the satisfaction and under the direction of the Owner and Fitzhugh and Byron, the Architects for the Owner, Shall and will provide all the material and perform all the work to install the plumbing in the Junior College Building, in accordance with the drawings and specifications prepared therefor by Fitzhugh & Byron, architects, which drawings and specifications, signed for identification by the parties hereto are hereby declared to be a part of this contract.

2. The Architects shall furnish to the contractors

such further drawings or explanations as may be necessary to detail and illustrate the work to be done, and the contractors shall conform to the same as far as they may be consistent with the original drawings and specifications referred to and identified as provided in paragraph 1.

3. Should the Owner at any time during the progress of [202] said work require any alterations in, deviations from, additions to, or omissions from the said contract, specifications or drawings, it shall have the right and power to make such change or changes, and the same shall in no way effect or make void this contract, but the difference in the work omitted or added shall be deducted from or added to the amount of the contract. No work of any description shall be considered extra unless a separate estimate in writing of the same, before its commencement, shall have been submitted by the contractors to the Owner and Architects, and their signatures obtained thereto. Should any dispute arise respecting the true construction or meaning of the drawings or specifications, or respecting the true value of any work to be omitted or added, the same shall be decided by the architects in charge, and their decision shall be final and conclusive, subject to arbitration as provided in the General Conditions of the Specifications.

4. The work embraced in this agreement shall be executed under the immediate charge of, and under the sole responsibility of said contractors until said work be fully and finally completed and delivered to and accepted by the Owner and its

Architects and the contractors shall assume responsibility for any damage which may occur to the building or materials during the work of this contract, except that the owner will carry fire insurance as hereinafter provided. The said contractors shall be responsible for any and all damage to persons and property during the performance of said work occasioned by his own act or neglect or that of any of his employees. The said contractors shall hold the said Owner harmless and free from expense or loss of any and every nature which may result from injury or damage sustained by any person or persons or damage to any property of any and all kinds which may result from any claim or claims, suit or suits, of any and every nature, as a result of the said contractors carrying on the work herein provided for. The Contractors shall carry from the time of the beginning [203] of their operations until the completion of the same, approved employer's liability insurance to cover all claims for injuries to their employees engaged in said work.

5. The Owner shall have the said building insured after its walls and superstructures are started, and shall from time to time increase such insurance as the work progresses, and the said policy shall have a clause showing the contractor's rights to such portion of the insurance as their interest may appear. The contractors shall assume all responsibility for materials on the ground.

6. Said contractors shall pay all workmen the wage scale prevailing in the community and shall in all respects, in the performance of the work of

this contract, observe the laws of the said State, especially a certain statute, being Chapter 1, Title XIV, of the Arizona Civil Code, 1913, and shall protect and save harmless said Owner, its officers and agents, from liability or loss on account of any violation of any laws of Arizona in the performance of the work of this contract.

7. The contractors shall provide sufficient, safe and proper facilities at all times for the inspection of the work by the Architects. They shall within twenty-four hours after receiving written notice from the Architects to that effect, proceed to remove from the grounds or the building all materials condemned or rejected, whether worked or unworked, and to take down all portions of the work which the Architects shall by like written notice condemn or reject as unsound or improper, or as in any way failing to conform with the drawings and specifications.

8. Should the contractors refuse or neglect at any time to supply a sufficiency of properly skilled workmen, or of materials of the proper quality, or fail in any respect to [204] prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, such refusal, neglect, or failure being ascertained by the Architects, the Owner shall be at liberty after two days' written notice to the contractors, given through the Architects, to provide any such labor or materials and to deduct the cost thereof from any money then due or thereafter to become due to the contractors under this con-

tract; and in the case of the discontinuance of the employment of the contractors, they shall not remove any appliances or materials from the grounds or building, neither shall they be entitled to receive any further payment under this contract until the work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the owner in finishing the work, such difference shall be paid by the Owner to the contractors; but if such expense shall exceed such unpaid balance, the contractors shall pay the owner the difference.

9. Should the contractors be obstructed or delayed during the prosecution of or completion of the work by the act, neglect, delay, or default of the Owner or the Architects, or by any damage which might happen by fire, lightning, earthquake, or cyclone, or by the abandonment of the work by the employees through no fault of the contractors, then the time herein fixed for the completion of the work, shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefor is presented to the Architects within forty-eight hours of the occurrence of such delay, and the duration of such extension shall be certified by the Architects and a copy thereof furnished the owner and the contractors. Until said building is completed, the contractors shall work in co-operation with any other contractors, or other persons [205] engaged in the proper furnish-

ing of labor and materials, or the installation of any fixtures for or in the said building.

10. The contractors agree that they will perform the work of this contract expeditiously as fast as the building is ready to receive it and will complete all work within 130 working days from the date of this contract.

11. Upon the faithful performance by the contractors of all the conditions and requirements of this agreement, the Owner hereby agrees and promises to pay to the said contractors, the sum of Eight Thousand, Four Hundred, Twenty-four and no/100 Dollars (\$8,424.00).

All payments to be made upon estimates and certificates of the Architects upon the first and fifteenth days of each month for seventy-five (75%) per cent of the amount of labor and material having entered into the building and materials having been delivered on the site since the preceding payment, the final payment of twenty-five (25%) per cent reserved from previous estimates or installment payments shall be made as soon after completion of the building as the contractors shall furnish satisfactory evidence that all claims against the building have been satisfied. The contractors shall promptly pay all sub-contractors, material men, labors, and other employees as often as payments are made to them by the owner, and shall as a condition of any such partial payments, if required, furnish to said owner satisfactory evidence that all sub-contractors, material men, laborers, and other employees upon said building, have been fully paid up to such time and shall deliver said

work free from any claims on account of such sub-contractors, material men, laborers or other employees, and in the event of their failing at any time to pay such claims, the owner may retain from all subsequent estimates and pay [206] over to such sub-contractors, material men, laborers and other employees, such sums as may from time to time be due them respectively. No certificate given or payment made under this contract, except the final certificate of final payment, shall be conclusive evidence of the performance of this contract either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper material. Nothing herein contained shall be construed as an undertaking on the part of the Owner to be responsible to any material men, laborers, or sub-contractors on account of any material furnished or labor performed upon said building in any amount whatsoever. Before final settlement is made, the contractors shall furnish satisfactory evidence to the owner that the work covered by this contract is free and clear from all claims for labor or material, and that no claim then exists for which liens could be enforced or filed if said building were owned by a private individual.

12. This Contract shall not be in force or effect until the contractors shall execute a bond for the faithful performance of this contract in the penal sum of Eight Thousand, Four Hundred, Twenty-four and No/100 Dollars (\$8,424.00) with Surety Company satisfactory to the Owner.

13. It is covenanted and agreed between the parties hereto for themselves, their administrators, executors, successors and assigns, that this contract and all its terms and provisions shall be final and binding upon them and each and every one of them.

IN TESTIMONY WHEREOF, the said Contractors have hereunto affixed their signatures and the Owner has caused this agreement to be subscribed by its Board of Education, the day and year first hereinabove mentioned.

PHOENIX PLUMBING & HEATING CO.

LYON FRANCIS,

LEO FRANCIS,

D. FRANCIS,

Contractors. [207]

PHOENIX UNION HIGH SCHOOL DISTRICT.

By BOARD OF EDUCATION,

President.

LOUIE GAGE DENNETT,

Clerk,

Trustee.

BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, D. L. Francis, Leo Francis and Lyon Francis, as principals, and AMERICAN BONDING COMPANY OF BALTIMORE organized and existing under the laws of Maryland duly authorized to do business as a surety company and to become surety upon bonds in the State of Arizona,

as surety herein, are held and firmly bound unto Phoenix Union High School District, of Maricopa County, Arizona, in the penal sum of Eight Thousand, Four Hundred, Twenty-four and No/100 Dollars (\$8,424.00) gold coin of the United States of America, to be paid said School District, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seal and dated this 5th day of September, 1928.

THE CONDITION of this obligation is such that:

WHEREAS, under and by virtue of a certain agreement in writing entered into on the 5th day of September, 1928, by and between the above bounden principals, D. L. Francis, Leo Francis and Lyon Francis, and the said Phoenix Union High School District, whereby, in consideration of the payment to the above bounden principals of a certain sum of money, the said principals agree to provide all the materials and perform all the work mentioned in the specifications and shown upon the drawings prepared by Fitzhugh & Byron for the installation of a plumbing system, to the satisfaction and under the direction of said Architects, [208] in the Junior College Building for the said Phoenix Union High School District, excepting, however, that said work might deviate from said plans and specifications and be subject to changes thereto in the manner provided in said contract, a copy of which said contract is hereto

attached and by reference made a part of this bond as though fully and completely written therein.

NOW, THEREFORE, if the above bounden D. L. Francis, Leo Francis and Lyon Francis, their heirs, executors, administrators, successors or assigns, or either of them, shall well and truly perform all of the agreements of the said contract to be performed upon their part in the manner and form and at the time stated and specified in said contract, then this obligation shall be void; otherwise to be and remain in full force and virtue.
PHOENIX PLUMBING & HEATING CO.

LYON FRANCIS,
LEO FRANCIS,
D. FRANCIS,

Principals.

AMERICAN BONDING COMPANY OF
BALTIMORE.

By M. KINGSBURY SMITH, (Seal)
Attorney-in-fact,
Surety.

I, J. W. Laur, of the State of Arizona, County of Maricopa, hereby certify that the above is a true and exact copy of the original contract between the Phoenix Plumbing and Heating Company and the Phoenix Union High School District.

J. W. LAUR.

Subscribed and sworn to before me, a Notary Public, of the State of Arizona, County of Maricopa, on this day, November 19, 1929, at Phoenix, Arizona.

P. S. BASSFORD,
Notary Public. [209]

(Testimony of Walter S. Wilson.)

B.-522.

PETITIONERS' EXHIBIT No. 1.

In Evidence.

11-20-29.

Endorsed on back of exhibit:

Report of Special Master. Filed Feb. 18, 1930.
C. R. McFall, Clerk. United States District Court
for the District of Arizona. By H. F. Schlittler,
Deputy Clerk. [210]

TESTIMONY OF WALTER S. WILSON, FOR
PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

I am Clerk, Superior Court, Maricopa County. I have here records in case No. 28535, Phoenix Plumbers Supply Company et al. vs. W. J. Bachowetz et al., and a complaint in intervention by Phoenix Plumbing & Heating Company, filed December 28, 1928, in which Phoenix Plumbing & Heating Co. is designated a co-partnership composed of D. L., Leo, and Lyon Francis. The verification by Dee L. Francis is as follows: (Reading:)

“State of Arizona,
County of Maricopa,—ss.

Dee L. Francis, being first duly sworn, upon oath deposes and says that he is one of the members of the co-partnership known as the Phoenix Plumbing & Heating Company; that he makes

this verification for and on behalf of said co-partnership, being duly authorized so to do; that he has read the foregoing complaint in intervention and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge except as to the matters and things stated upon information and belief, and as to these, he believes them to be true.

DEE L. FRANCIS.

Subscribed and sworn to before me this 28th day of December, 1928.

(Seal) MARJORIE KINGSBURY,
Notary Public.

My commission expires January 29, 1928.

TESTIMONY OF LEO FRANCIS, FOR PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

I am Leo Francis, aged 25. I filed schedules as a [211] bankrupt. I turned books to Mr. Thalheimer, and some books were not shown to him as they were previous to April 21, 1929. We had bookkeeper for books. About 21st of April, 1929, we had a blow-up in shop, and some books and records were destroyed. We had a bookkeeper named Fretz, who started work May or June. Paul Gehres was a bookkeeper before that and at the time the books were destroyed. Fryberger was manager and employed at same time Fretz was.

TESTIMONY OF C. L. LANE, FOR PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

I am assistant cashier, Commercial National Bank. The bank had dealings with Phoenix Plumbing & Heating Company. I have record of their checking account and borrowings. They began borrowing October 22, 1927. The note was signed Phoenix Plumbing & Heating Company by D. Leo Francis; all notes have been signed D. Leo or D. L. Francis. In October, 1927, the loan was \$200.00. Running along from that time loans were continually made by Commercial National Bank at different periods. On 30th of April, 1929, the amounting owing to the Bank was \$6,000.00; on August 17, 1929, the amount due was \$6,100.00 and interest. We are a creditor at the present time for that amount. I have statement dated October 15, 1927, made by the Phoenix Plumbing & Heating Company for the purpose of obtaining credit from the Bank, the first one made to us. It is signed D. Leo Francis. Dee Francis is the man who signed it. Statement produced as:

(Petitioning Creditors' Exh. 2 in Evidence.)

[212]

B.-522.

PETITIONERS' EXHIBIT No. 2.

In Evidence.

11-20-29.

NAME—D. Leo Francis.

KIND OF BUSINESS—Plumbing & Heating.

ADDRESS—316 North 6th Ave., Phoenix, Arizona.

Phoenix Plumbing & Heating Co.

INDIVIDUAL OR PARTNERSHIP STATEMENT.

To the Com'l Nat. Bank. Bank of Phoenix, Ariz.

For the purpose of obtaining credit with you from time to time I herewith submit the following as being a fair and accurate statement of my financial condition on Oct. 15, 1927.

ASSETS.

Cash on hand and in bank.....	258.54
Notes Receivable	
(Give due dates and details of important items on reverse)	
Accounts Receivable	1056.00
(Give full details of important items on reverse)	
Salable Merchandise (How valued	3700.00
United States Government Securities.....	
(.....Horses @.....	
Live (.....Cattle @.....	
Stock (.....Sheep @.....	
(.....Hogs @.....	

270 *Standard Sanitary Manufacturing Company*

Estimated Value Growing Crop.

Acres. Crop. Yield. Price. Total.

	Total Quick Assets.....	5014.54
Real Estate (List on reverse).....		
Machinery and Tools (Actual value) In-		
ventory and office fixtures—3 Trucks...2	2500.00	
2-F C A Rs		
Other Stocks and Bonds (List on reverse)		
Other Assets (Describe)		
	Total	7514.54

[213]

LIABILITIES.

Notes Payable, to banks.....		
(Give due dates and details on reverse)		
Other Notes Payable		
(Give due dates and details on reverse)		
Open Accounts Payable		
Chattel Mortgages on (Not legible).....		
due	192....	2670.00
Other indebtedness		
(Give full details on reverse)		
	Total Current Debts.....	2670.00
Mortgages or Liens		
on Real Estate, due.....	192....	
.....		
	Total Liabilities	2670.00
	Net Worth	4844.54
	Total	7514.54

(Testimony of C. L. Lane.)

Liability as endorser for others \$———

Are any of the above assets pledged to secure indebtedness ——

Life Insurance carried—\$10000.00. Payable to—
Wife.

Fire Insurance on personal property—\$1000.00,
On buildings—\$——— Do you carry Employers' Liability Insurance? Yes.

Are any suits or litigation pending either for or against firm? No. Details ——

Signed—D. LEO FRANCIS.

(Over) [214]

I have a statement dated April 2, 1928, signed by Leo Francis.

B.-522.

PETITIONERS' EXHIBIT No. 3.

In Evidence.

11-20-29.

NAME—Phoenix Plumbing & Heating Co.

KIND OF BUSINESS ——

ADDRESS—316 N. 6th Ave.

INDIVIDUAL OR PARTNERSHIP STATEMENT.

To the Com'l Nat. Bank. Bank of Phoenix, Arizona.

For the purpose of obtaining credit with you from time to time I herewith submit the following as being a fair and accurate statement of —— financial condition on April 2, 1928.

ASSETS.

Cash on hand and in bank.....	1758.50			
Notes Receivable				
(Give due dates and details of important items on reverse)				
Accounts Receivable	2878.20			
(Give full details of important items on reverse)				
Salable Merchandise (How valued.....)	8700.00			
Contracts as attach list.....	19012.10			
United States Government Securities....				
(.....Horses @.....)				
Live (.....Cattle @.....)				
Stock (.....Sheep @.....)				
(.....Hogs @.....)				
Estimated Value Growing Crop.				
Acres	Crop	Yield	Price	Total
				<hr/>
Total Quick Assets.....				32348.80
Real Estate (List on reverse)				
Machinery and Tools (Actual value).....				1400.00
Other Stocks and Bonds (List on reverse)				
Other Assets (Describe).....				
				<hr/>
Total				33348.80

[215]

LIABILITIES.

Notes Payable, to banks	1350.00
(Give due dates and details on reverse)	
Other notes Payable	
(Give due dates and details on reverse)	
Open Accounts Payable	3970.00

(Testimony of C. L. Lane.)

Chattel Mortgages on	1701.00
due	192.00
Other Indebtedness.	
(Give full details on reverse)	
For Labor and Material to finish Contract work	14200.00
	<hr/>
Total Current Debts....	21221.00
Mortgages or Liens on Real Estate, due	192.00
	Total Liabilities.....21221.00
	Net worth .....12127.80
	<hr/>
	Total.....33348.80

Liability as endorser for others—\$ None.

Are any of above assets pledged to secure indebtedness? None.

Life Insurance carried—\$11500.00. Payable to—Parents.

Fire Insurance on personal property—\$2,000.00.

On buildings—\$ None. Do you carry Employers' Liability Insurance? Yes.

Are any suits or litigation pending either for or against firm? None. Details. ———.

Signed—LEO FRANCIS.

(Over) [216]

In June and July, 1929, Fretz submitted figures on firm standing and brought the books and we went over them together.

There were two statements made up by Fretz, one dated June 20th and one June 22d. Net worth in statement \$5,718.79; contracts receivable \$47,-

(Testimony of C. L. Lane.)

400.64. This statement was found incorrect and we drew up another. On July 20th, figures were furnished by Nihel of Standard Sanitary Co. as to material needed and Fryberger, manager of Phoenix Plumbing & Heating Co. as to labor needed to finish contracts receivable, and I drew up statement.

Mr. Fretz and I went over the books, checks, cash on hand; the inventory figures were furnished by Mr. Fryberger. Some figures were furnished by Mr. Nihel of the Standard Sanitary and by Mr. Fryberger, who was then manager. Mr. Fretz and I drew up schedules to show the total amount due, and he and Mr. Fryberger gave me the estimates of the amounts to complete the jobs.

I have *Dunn's* Report of August 18, 1928, which shows Phoenix Plumbing & Heating Company as a co-partnership.

(Received and marked Petitioner's Exhibit No. 4 in Evidence.) [217]

B.-522.

PETITIONERS' EXHIBIT No. 4.

In Evidence.

11-20-29.

IMPORTANT—Note if NAME, BUSINESS and ADDRESS correspond with your inquiry.

Rv.

PHOENIX PLUMBING & HEATING COMPANY (NOT INC.)

PHOENIX, ARIZONA,
Maricopa County,
316 N. 6th Ave.

Plbg. & Heating Contrs.

D. L. Francis, aged 34, married.

Lyon Francis, aged 23, married.

Leo Francis, aged 22, married.

(Y) Cond. 24200 August 18th, 1928.

RECORD.

This business was started a number of years ago by another however, on October 1, 1927, Leo Francis succeeded to same and for a time he operated individually although the above are now given as owners. The Francis family came from Forth Smith, Ark., where they were identified with the same line, although for a time, Leo Francis was at Kanowa, Okla., where he was known as a solicitor.

STATEMENTS.

A statement as of October 1, 1927, furnished by Leo Francis over his signature, and showing him-

276 *Standard Sanitary Manufacturing Company*

self as the owners of the business included total assets of \$7,520, liabilities \$2,670, and surplus \$4,850.

A statement from actual inventory of May 31, 1928, signed Phoenix Plumbing & Heating by Paul E. Gehree, cashier, is now furnished, same showing the above as partners and financial condition as follows:

ASSETS.		LIABILITIES.	
Mdse. on hand.....	6,042.95	For Mds. not due...	7,195.36
Outstanding Accts..	2,642/78	Loans from bank...	4,000
Notes Recv.	283.40	Int. Cont. Payable..	1,845.08
Cash on hand & Bk.	1,684.38	Cap. Investment	
Machy. Fixts. Etc..	2,244.75	Accts.	15,236.55
Deposits on plans & Bids	1,138		
Due on contracts...	14,300.73		
	<hr/>		
	\$28,276.99		<hr/>
			\$28,276.99

Insurance on merchandise—\$1,800. On machinery and fixtures—\$500. Annual rent—\$636. Annual sales (Estimated)—\$120,000.

GENERAL INFORMATION.

The present statement shows considerably increased assets in comparison with the one of October, 1927, however since latter date, a good business has been done and some progress is conceded. As noted, they have quite a large amount due on contracts, as well as outstanding accounts and while total liabilities are large, they are not regarded as out of proportion to their total assets. The

owners maintain good banking connections, carry a fair balance there usually, and have been extended accommodations at times. Affairs are capably managed, those interested are well regarded, they have done well as stated, having handled a number of large contracts since their business was established.

FIRE HAZARD: The building occupied is a one-story building, the front being of cement block while the rear is of frame [218] and *and* sheet iron. On one side and close is a brick residence, while on the other side and on a corner, is a two-story brick building. The lower floor is occupied by a grocery, bakery, and restaurant, while the second floor is used as a rooming-house.

TRADE REPORT

HC ORDER OWE DUE PAYS

3500

Prompt

688

Discount

FIRE RECORD

None.

Y-8-18-28

(CCO)

BK. CN.

N. Q. to G 3

T. R. (24200-SSMCO-5495) [219]

(Testimony of C. L. Lane.)

RESPONDENTS' EXHIBIT "A" FOR IDENTIFICATION.

(COPY.)

PHOENIX PLUMBING AND HEATING COMPANY.

June 22, 1929.

ASSETS:

Cash on Hand	\$2037.45	
Cash in Bank (Overdraft) ...	907.54	\$ 1129.91
		<hr/>
Contracts Receivable		47400.64
A/C Rec. Since Jan. 1, 1929		2327.96
A/C Rec. Prior Jan. 1, 1929		1562.02
Due from Others		850.00
Inventory		5000.00
		<hr/>
		\$58270.53

LIABILITIES:

Accounts Payable	\$46,451.74
Notes Payable	6,100.00
Net Worth	5,718.79

 \$58270.53

[220]

Later in July conference was held in Adams Hotel; present Leo Francis, Mr. Norris, Stahl, Mr. Fretz and myself. Leo Francis said firm was partnership, that he and his two brothers divided profits. I never saw contract of assignments dated July 11, 1929, signed by Phoenix Plumbing & Heat-

(Testimony of C. L. Lane.)

ing Company, a form of assignment to Mr. Fryberger.

Cross-examination by Mr. DUFFY.

Referring to Respondents' Exhibit "A" for identification, this is statement of accounts receivable and payable, part of statement on June 22, 1929.

Phoenix Plumbing & Heating Company owed Bank \$6,000 on April 30, 1929, later we made more loans. On May 15, \$1,000, and May 22, they loaned \$2,000. The total loan was \$6,100. In May we loaned \$3,000.00, but some payments had been made. At close of business May 1st their checking account showed \$802.90, and on May 15, \$1,465.74, May 22d, \$542.46. The loan committee passed on loans. Sometimes loans are made without O. K. of loan committee. I don't know if committee passed on May loans. I am Assistant Cashier. There is no hard-and-fast rule about loan committee passing on loans. It is up to person making loan. No limit on officer making loan if good collateral is put up. I don't know whether application for \$2,000 with only a statement would go to loan committee. Would depend on credit of applicant. Up to May 22, the bank loaned Phoenix Plumbing & Heating Company in various amounts. My loan sheet does not show who passed on loan of May 15th. We ordinarily have application form which is then O. K.'d by loan committee. I don't know if there is a loan sheet on loan of May 22d. I have here financial file. There is [221]

(Testimony of C. L. Lane.)

usually a slip attached to note when it is fixed up. The loan of \$6,000 was reduced and increased so that on August 17, 1929 they owed \$6,100; that was done by payment of \$1,000 on May 9th, and an increase in loan of \$2,000 on May 15th; increased another \$1,000 and reduced \$1,000 on June 3d—\$900 on June 5th. I don't know how payments were made. I having nothing to do with them. (Stipulated that witness should go back to bank and look for loan application, with understanding that if he could not find it, he need not return, but if found he would return as witness of intervening creditors.)

(Examination by Miss BIRDSALL.)

Q. In regard to this statement of July 20th,—there is a statement here of assets; how were those assets arrived at? I don't think that was made clear; they were made from an examination of the books of the Phoenix Plumbing & Heating Company? A. Yes. Here is cash on hand, \$150.

Q. That was taken from the books of the Phoenix Plumbing & Heating Company? A. Yes.

Q. What was the accounts receivable total?

A. Accounts receivable taken from the books, \$5,935.92; contracts receivable, \$45,119.20; inventory, \$4,850.00; this figure was furnished by Mr. Fryberger.

Mr. DUFFY.—I object to this witness testifying to that. This isn't the proper way to bring this evidence in; I object to his testifying as to what was furnished him by other people. (Argument by counsel.)

(Testimony of C. L. Lane.)

The MASTER.—The objection is sustained.

(Exception by Miss BIRDSALL.)

Q. Now then, coming to the accrued salaries, where was that taken from?

A. Mr. Fretz gave me that—I imagine from his pay-roll.

Q. What is the amount of it? [222]

A. \$107.50—that is accrued salaries. The next pay-roll was for the week ending June 20, 1929,

Q. Where did that come from?

A. Mr. Fryberger,—\$550.

Q. What is the next item?

A. Estimated labor to complete contracts.

Q. Who furnished that figure?

A. Mr. Nihel and Mr. Fryberger together. I drew up a schedule of the contracts receivable, showing the total of amounts paid and left a column for the amount of labor and material, and Mr. Fryberger and Mr. Nihel furnished the figures on each job.

Mr. DRAKE.—I want to be clear as to how far Crane Co. is concerned,—that that is not binding upon us. You want to avoid having it read into the record, but we have a chance to object.

(Argument by counsel.)

Q. Will you state then, please, the circumstances under which Mr. Nihel made up that estimate?

A. There were a number of conferences,—

Q. He came to your bank? A. Yes.

Q. Why did he come?

A. Well, we could see things were in bad shape,

(Testimony of C. L. Lane.)

and we wanted if we could to work it out for the best interests of all concerned. * * * [223]

On June 20th, Saturday afternoon, Nihel of Standard, Norris and one or two of creditors, Fretz and Fryberger, met and it was agreed that books should be brought to bank on Monday and that we would check over books and see what these contracts should be listed for, how much money and material it would take to finish them.

The estimates was made by these two, Fryberger and Nihell, after a number of conferences. It was agreed that the estimate should be made up to show true conditions and that all should help to straighten it out. Nihel asked how much labor was necessary. Fretz decided how many days it would take to finish for purpose of ascertaining amount of liability of company at that time. I have a copy of memo showing notation of meeting. Notes payable to banks compiled from my record. Accounts payable from books of Phoenix Plumbing & Heating Company. Figures on Accounts payable to Standard Sanitary were furnished from Nihel. Phoenix Plumbing & Heating Company books did not show amount due Standard Sanitary Company.

Recross-examination by Mr. DUFFY.

Conferences were to find out true condition of Company. Nihel was urging the need of creditors helping company over difficulties. Nihel did not say they were a going concern at all conferences. He might have said that at one time. Figures

(Testimony of C. L. Lane.)

were compiled to find out exact condition of firm. No one ready to step forward with money to help them. I spent a lot of time over it. Mr. Morris was there Sunday afternoon, not during week. Mr. Korrick was there. He is a director. He was there on Saturday. Stahl was not there. I can't say that Mr. Korrick did not say, "The Commercial National Bank will not stand by, but you stand by, or we'll put them into Bankruptcy." I don't know what Nihel and others had in their minds. [224] It was patent that Phoenix Plumbing & Heating Co. was insolvent. The reason for preparing statement was that I was directed by bank officials to find out exact condition of Phoenix Plumbing & Heating Company. I know they were insolvent, definitely, on July 20, but had reason to believe it before. On figures furnished by Mr. Fryberger, insolvency was established.

Redirect Examination by Miss BIRDSALL.

The figures on statement show them insolvent. Nihel did not say concern was solvent on July 20th. He said at that time we would be lucky if we got so many cents on the dollar.

TESTIMONY OF DAVID MONTGOMERY, FOR PETITIONING CREDITORS.

(Examined by Miss BIRDSALL.)

I am Chief of Police, city of Phoenix. I have here Police Record for April, 1929, (reading) which shows safe 316 N. 6th Ave. blown at 9:15

(Testimony of H. E. Green.)

P. M. by thugs. Fire department called. Later officers Greene and Asche brought in evidence of attempted arson at same address.

TESTIMONY OF H. E. GREEN, FOR PETITIONING CREDITORS.

(Examined by Miss BIRDSALL.)

I am a patrolman, Police Department, City of Phoenix. On April 21, 1929, I was on Five Points beat, which includes 316 North Sixth Avenue. In early morning on that date fire alarm on Sixth Avenue and Van Buren was turned in. I heard explosion, located it and waited for fireman. It was 316 North Sixth Avenue. I went in and found that there had been an explosion; the door, all the inside of the place had been blown to pieces. If there was any fire, the force of the explosion had put it out. Before the fire-alarm, I had checked the safe, as is customary, from the window. The safe door was shut. When I went back with fireman, the safe door had been wrenched from its hinges and the safe moved three or four feet toward the south from its original position. We had trouble [225] with the curious and in finding owners of place. One window on alley was shattered; it was covered with fine mesh screen. One window in front door was broken. On north of door was a low partition fixed like interior of bathroom. Splinters were driven through that. Apparently roll-top desk had been splintered. I couldn't tell what was on floor, piles of paper blown

(Testimony of H. E. Green.)

to atoms, and dust over everything. I stayed all night. Proprietors came in later; there is one (pointing to D. Francis in courtroom). Everything was intact in the safe. Early in the morning Asche of the Merchants' Patrol met me at Five Points. He assisted me in my investigation. We went in and examined the safe; thought it was a safe job. We found no soap. We found a bookshelf on the south side of the building, under which was the safe. There, under the shelf, was a box sixteen inches square by one and one-half inches high. In the corner was a candle about two inches high, partly burned. On the south side of the door was a long pipe framework, and under this an empty five-gallon can pretty well bent. On the floor some kind of stuff had soaked in; don't know whether it was kerosene, gasoline or what—had a peculiar odor. Could not tell what it was because of dust. We turned all this stuff into police department.

The candle was in a square box with lots of holed in top; they went only through one side. The holes in top did not go through bottom. Candle was in hold on top, and box was scorched black. Box was under safe. The safe door was swung back on hinges and turned completely around by concussion. The papers were torn by the concussion, but the steel compartments were in the safe. Asche was with me during the investigation. No fingerprints were taken.

TESTIMONY OF CHARLES ASCHE, FOR
PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

My name is Charles Asche and I am a fingerprint and identification expert, formerly on City [226] Police Department, at present and since November, 1928, have been operating an independent merchant patrol.

I went over to 316 North Sixth Avenue on night of April 21, 1929, at request of Mr. Green, who met me there. I found that the door had been forced and then closed to keep people out. The room was covered with pieces of paper and office supplies, and desks were driven into wall from force of explosion. The safe door had been blown off the hinges, but lay in such a position I know it could not be a safe job. Before disturbing anything, I took these flashlight pictures, one on south side and one on east side of room to show condition of things. I determined that explosion had been alongside safe rather than under it. I knew it was not a safe job because there was no sign of anything on outside. When a safe is blown, the crack is always soaped, and the top of the door is sprung with a chisel or filed; it always shows around the crack. Here, the bolts on wall of safe were out, door completely turned around, and no sign whatever of interior explosion; nothing outside but bits of paper sticking on safe from force of explosion, but not on interior. I took pictures of the interior.

(Testimony of Charles Asche.)

(Pictures introduced in evidence marked Petitioners' Exhibit No. 5 in Evidence.)

(Upon a petition of the petitioning creditors an order was issued by the Court providing for the inclusion of the original pictures in the record, and the original pictures are filed herewith.)

I found on north side of safe a shattered condition on the floor, about twenty inches in diameter, where the floor was all splintered up; also a slow fuse, two pieces of lumber put together and a tallow candle stuck in, the holes for the purpose of creating a draft, and candle was burnt down to the wood where there was a wick or cloth of some kind. I knew then it was a gasoline job. We found a five-gallon can with a hole and spout to pour oil out. It had been exploded. It lay [227] so that the spout was crossways, ends bulged out, one end blown out, showing can was laying down, the position showing it could hold two and one-half gallons. When candle burned to wick it was intended to start fire, but instead it caused explosion. We found no more evidence. Reported to police, verbally and in writing. Last I heard of it. The room was 20x20; there was a display of plumbing fixtures on walls on one side of bathtubs; one-half office, one-half display room; a long counter and partition, with beaver-board partition on other side; office was less than half room. The safe was in southeast portion and the can back in northwest part, either blown or thrown there. A roll-top desk had been against safe. The whole room was littered with all

(Testimony of Charles Asche.)

kinds of books, especially letters and loose-leaf books, all blown to bits the size of end of your little finger. The slow fuse had been blown under safe, but it had been under desk because there was just room enough for fuse and can. The desk was a roll-top, with drawers on either side. That is where can was, and concussion blew it under safe. Fuse was sixteen inches long, boards sixteen inches square. The holes were to give vent—without it candle would go out. All I saved was a piece of desk. It was oak desk and shredded like pieces of raveled cloth. No finger-prints available on account of dust. Glass shattered and wall cracked on one side. Checks and everything about office were destroyed; books and files torn to shreds, with exception of some things behind and protected.

TESTIMONY OF C. L. LANE, FOR INTER-
VENING CREDITOR (RECALLED.)

Mr. LANE, recalled as witness for intervening creditor out of order by stipulation.

(Examined by Mr. DUFFY.)

I found approval of loan made May 15th, 1929. Here it is, taken from our financial files, which contains data relating to financial condition of customers or new customers applying for loans or credit. As Assistant Cashier, it is in my custody. The financial files contain data on financial condition of customers [228] of the bank when loans or credit are asked for.

Received as

B.-522.

RESPONDENTS' EXHIBIT "B."

In Evidence.

Face of Exhibit:

Phoenix, Arizona, May 15, 1929.

To THE COMMERCIAL NATIONAL BANK OF
PHOENIX, ARIZONA:

I hereby make application for a loan of \$2,000.00

We
payable 15 days after date on our name with collat-
my

eral as follows:

PHOENIX PLUMBING & HEATING CO.

Purpose of Proceeds:

Payroll

Back of Exhibit:

Present Loan \$ _____

Present Contingent \$ _____

Present Rate:

High Loan: 3-3-27 \$7,000.00.

Average Balances:

192— \$ _____

192— \$ _____

Total Deposits:

192— \$ _____

192— \$ _____

Financial Statement _____

Quick Assets, \$ _____

Current Debts, \$ _____

Stockholder? _____

Remarks: _____

Approved: T. G. NORRIS.

I. ROSENZWEIG.

G. M. N. [229]

Thereupon the attorney for the petitioning creditors offered in evidence the schedules in bankruptcy of Leo Francis, which were received in evidence and marked:

B.-522.

PETITIONERS' EXHIBIT No. 6. [230]

In the District Court of the United States, in and
for the District of Arizona.

MOMSEN-DUNNEGAN-RYAN COMPANY, a
Corporation, et al.,

Petitioning Creditors,

vs.

PHOENIX PLUMBING AND HEATING COM-
PANY, a Co-partnership, et al.,
(Alleged) Bankrupts.

DEBTOR'S SCHEDULES.

LEO FRANCIS, doing business under the name and style of Phoenix Plumbing and Heating Company, at Phoenix, in the county of Maricopa, state of Arizona, in the Federal District of Arizona, Phoenix Division, respectfully represents:

That he has had his principal place of business at Phoenix, in Maricopa county, Arizona, for the greater portion of ——— years next immediately preceding the filing of the Creditors' Petition praying that he be adjudged a bankrupt;

That he has filed herein his Admission of Willingness to be adjudged a bankrupt;

That he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to Bankruptcy.

That the schedule hereto annexed, marked A (1, 2, 3, 4, 5), and verified by his oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain), the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B (1, 2, 3, 4, 5, 6), and verified by his oath, contains an accurate statement of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

LEO FRANCIS,
Bankrupt.

O. E. SCHUPP,
Attorney for Bankrupt.

United States of America,
Federal District of Arizona,
County of Maricopa,—ss.

I, Leo Francis, doing business under the name and style of Phoenix Plumbing and Heating Company, one of the debtors mentioned and described in the above-entitled action, do hereby make solemn

oath that the statements contained in the schedules hereto attached are true according to the best of my knowledge, information and belief.

LEO FRANCIS,
Bankrupt.

Subscribed and sworn to before me this 17th day of September, 1929.

[Seal]

O. E. SCHUPP.

My commission expires February 15, 1932. [231]

B.—“Debts” shall include any debt, demand or claim provable in bankruptcy. Sec. 1 [11]

N. B.—“Creditor” shall include anyone who owns a demand or claim provable in bankruptcy and may include his duly authorized agent, attorney or proxy. Sec. 1 [9]

SCHEDULE A.

STATEMENT OF ALL DEBTS OF BANKRUPT.

SCHEDULE A. (1)

Statement of all creditors who are to be paid in full or to whom priority is secured by law.

CLAIMS WHICH HAVE PRIORITY

	<u>AMOUNT</u>
<p>ference to Ledger or Voucher.—Names of Creditors.— Residence (if unknown, that fact to be stated.) Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.</p>	<p>[1.] Taxes and debts due and owing to the United States.</p> <p style="text-align: right; padding-right: 20px;">None.</p>
<p>ference to Ledger or Voucher.—Names of Creditors.— Residence (if unknown, that fact to be stated.) Where and when contracted.—Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.</p>	<p>[2.] Taxes due and owing to the state of..... or to any county, district or municipality thereof.</p> <p>Maricopa County and State of Arizona by Phoenix Plumbing & Heating Co..... 217 63</p> <p>City of Phoenix, Arizona, by Phoenix Plumbing & Heating Co., \$99.92, by Leo Francis, \$5.36, Total..... 105 28</p>

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Reference to Ledger or Voucher.— Names of Creditors.— Residence (if unknown, that fact to be stated.) Where and when contracted.— Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[3.] Wages due workmen, clerks or servants to an amount not exceeding \$300.00 each, earned within three months before filing this petition.

Earl Shipp, 6 days @ \$4.00 per day.....	24 00
Lyon Francis, 6 days @ \$10.00 per day.....	60 00
B. H. Purcell, Yuma, Arizona, 8½ da. @ \$10.00 per day.....	85 00

Reference to Ledger or Voucher.— Names of Creditors.— Residence (if unknown, that fact to be stated.) Where and when contracted.— Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[4.] Other debts having priority by law.

None

Total.....491 91

LEO FRANCIS, Petitioner. [232]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

SCHEDULE A. (2)

CREDITORS HOLDING SECURITIES.

(N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Acts of Congress relating to Bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.)

	AMOUNT OF DEBTS
Reference to Ledger or Voucher— Names of creditors.—Residence (if unknown, that fact must be stated).—Description of securities.—When and where debts were contracted. Value of securities.	Standard Sanitary Manufacturing Company, Phoenix, Arizona, estimated at.. 39,552 62 Partially secured by following assignments: Balance on contract with W. H. Brown for work on Hospital for the Insane; amount of contract \$7,270.05, credits \$4,080.00, balance assigned May 7, 1929 3,190.05 Contract with the City of Phoenix, Phoenix, Arizona, for construction of new City Hall; amount of contract \$23,233.85 with extras, credited \$14,526.00, balance assigned May 7, 1929...8,707.85 This job was taken over Southern Surety Company, bondsman, for completion. Contract with Phoenix Union High School for Central Heating Plant; amount of contract and extras \$29,326.10, credited \$25,819.00, balance assigned May 7, 1929 3,507.10 This job was taken over by the Massachusetts Bonding Company for completion.

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Contract with Phoenix Union High School for Junior College Building; amount of contract and extras \$8,424.00, credited \$6,318.00; balance assigned May 7, 19292,106.00

Job Uncompleted

Contract with Phoenix Union High School for Library and Class Room building; amount of contract and extras \$18,860.00, credited \$9,450.00; balance assigned May 7, 19299,410.12

This job was taken over by American Bonding Company for completion.

Unable to give actual or approximate amounts received or that may be received by the Standard Sanitary Mfg. Co., on above assignments.

The Crane Company, Phoenix, Arizona.
The Crane Estimated at 5,551 33

Partially secured by the following assignments:

Contract with O. R. Bell, Contractor, job at 23 W. Monroe St., Phoenix, \$289.91 289.91

Contract with O. R. Bell, job at 917 N. 8th St., Phoenix400.00

Amount due from E. J. Bennitt, Country Club Drive, Phoenix, Arizona...1,000.00

Amount due from Harry Tritle No. Alvarado St., Phoenix, Ariz.....800.00

Forward Total 45,103 95

LEO FRANCIS, Petitioner. [233]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

Forward.....	45,103.95
Schedule A-2, page 2. Crane Co. Cont.	
Amount due on contract with Green & Hall on Dan Campbell residence; amount of contract and extras \$1597.55, credited \$900.00, balance due \$697.55, \$500.00 of which assigned to Crane Co.....	500.00
Amount due from James Barnes, W. Latham St.....	271.49
Contract with Green & Hall of Schwenker residence, \$2934.00, credited, \$1300.00, balance assigned \$1,634.00. This job taken over by Massachusetts Bonding Co., for completion	
Contract with Hogan & Farmer on Marana Teachers College, Marana, Arizona, Contract \$1127.00 credited \$500.00, balance \$627.00, assigned.....	627.00
Unable to give actual or approximate amounts received or that may be received by the Crane Company on above assignments.	
Total.....	48,136.44

LEO FRANCIS. [234]

SUGGESTION

(In filing this blank, be careful to strictly follow form which requires a statement as to "nature and consideration of debt; and whether any judgment," etc.)

SCHEDULE A. (3)

CREDITORS WHOSE CLAIMS ARE UNSECURED.

(N. B.—When the name and residence (or either) of any drawer maker, indorser, or holder of any bill or note, etc., are unknown the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

	AMOUNT
Reference to Ledger or Voucher.—Names of creditors.—Residence (if unknown, that fact must be stated).—When and where contracted.—Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and if so, with whom.	
Arizona Grocery Company, Phoenix, Arizona	2 25
Arizona Printers, Inc., Phoenix, Arizona..	28 25
Arizona Concrete Co., Phoenix, Arizona..	181 87
Arizona Republican, Phoenix, Arizona...	64 00
Atlas Valve Co., 282 South St., Newark, N. J.....	337 56
Arizona Hardware Supply Co., Phoenix, Arizona	8 92
Armstrong Machine Works, Three Rivers, Mich.	79 92
Allison Steel Mfg. Co., Phoenix, Arizona..	317 42
Arizona Battery & Equipment Co., Phoenix, Arizona	322 73
Arizona Storage & Distributing Co., Phoenix, Arizona	15 00

A. & A. Motor Co., 301 N. Central Ave., Phoenix, Ariz.	24 63
Arizona Directory Co., 1240 S. Main St., Los Angeles, Calif.	10 00
Arizona Plumbing & Supply Co., Phoenix, Arizona	29 65
Aetna Life Insurance Company, Hartford, Conn.	12 94
Arizona Highway Department, Phoenix, Arizona	4 80
Bobrick Chemical Corp., 111-117 Gary St., Los Angeles, Cala.	26 56
A. C. Brauer Company, St. Louis, Mo....	5 55
The Builder & Contractor.....	24 00
Boston Store, Phoenix, Arizona.....	20 82
Capitol Foundry Co., Phoenix, Arizona...	8 20
Central Arizona Light and Power Co....	6 55
Commercial National Bank, Phoenix, Ari- zona	6,100 00
Credit Audit Co., 1931 Ry. Exchange Bldg., St. Louis, Mo.	5 55
Vernon Clark, Phoenix, Arizona	2 55
Edwards, Wildey & Dixon Co., Phoenix, Arizona	7 25
Five Points Blacksmith Shop, Phoenix, Ariz.	35 55
The Elliott Engineering Company, About..	2,680 00
Joe Francis, balance a/c money loaned, Phoenix, Arizona	60 00
Don Gilmore, Inc., Phoenix, Arizona.....	5 80
The Gazette Co., Inc., Phoenix, Ariz.....	15 00
Gila Valley Plumbing & Heating Co., Saf- ford, Ariz.	11 99

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Glauber Bros. Mfg. Co., Cleveland, Ohio..	69 6
Hulse & Dick, Ford Dealers, Yuma, Arizona	6 00
J. D. Halstead Lumber Co., Phoenix, Arizona	116 20
E. R. Hill, Phoenix, Ariz.....	30 00
Heinz, Bowen & Harrington, Phoenix, Arizona	29 25
A. J. Keen, 316 N. 6th Ave., Phoenix, Arizona	30 00
Los Angeles Mfg. Co., Los Angeles, Calif..	596 80
Total	

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

Petitioner. [235]

Page 3 Continued.

Mathews Paint Co., Phoenix, Arizona.....	73	10
O. B. Marston, Phoenix, Arizona.....	2	20
Milwaukee Valve Co., Milwaukee, Wisconsin	301	00
Momsen, Dunnegan & Ryan, Phoenix, Arizona	486	08
McArthur Bros., Phoenix, Arizona.....	32	30
J. H. McCarthy, Phoenix, Arizona.....	1.00	
Merchants Police Patrol, Phoenix, Arizona.	2	00
M. & M. Welding Co., Phoenix, Arizona....	88	60
Mt. States Tel. & Tel. Co., Phoenix, Arizona	22	70
New Hale Electric Co., Phoenix, Arizona..	4	23
Fred Noll Tire Service, Phoenix, Arizona..	44	50
Total.....	12,297	91

LEO FRANCIS,
Petitioner. [236]

O. E. Specialty Mfg. Co., Phoenix, Arizona.	166	24
Oil Burning Equipment Co., Phoenix, Arizona	3,225	00
Powers Regulator Co., 2720 Greenview Ave., Chicago, Ill.....	131	25
Phoenix Arizona Club, Phoenix, Arizona..	15	00
Phoenix Auto Supply Co., Phoenix, Arizona	50	91
The Peoples Transfer Co., Phoenix, Arizona	19	56
Pratt Gilbert Hardware Co., Phoenix, Arizona	73	31
Postal Telegraph Co., Phoenix, Arizona...	19	80
Public Service Brass Company.....	448	50
The Phoenician, Phoenix, Arizona.....	10	00

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The Phoenix Roofing & Supply Co., Phoenix, Arizona	92 50
Pacific Construction Co., Phoenix, Arizona.	17 00
W. M. Pepper, Phoenix, Arizona.....	531 95
Phoenix Tempe Stone Co., Phoenix, Arizona	34 00
Phoenix Blue Print Co., Phoenix, Arizona.	75
Pace Hardware Co., Safford, Arizona.....	35 10
Pure Food Cafe, Miami, Arizona.....	27 25
P. & M. Mfg. Co., 622 E. 4th St., Los Angeles, Calif.	9 48
Rio Grande Oil Company, Phoenix, Arizona	295 71
Chas. H. Richeson, Atty., Phoenix, Arizona.	10 00
Southwestern Cement & Plaster Products Co.	18 00
Standard Insurance Agency, Phoenix, Arizona	272 67
Star Sheet Metal Works, Phoenix, Arizona	118 64
S. W. Sash & Door Co., Phoenix, Arizona.	23 45
Southwestern Mfg. & Supply Co., Phoenix, Arizona	2,108 00
Sun Drug Co., Phoenix, Arizona.....	1 00
O. S. Stapley Co., Phoenix, Arizona.....	1 95
E. F. Sanguinetti, Yuma, Arizona.....	10 67
Silas Plumbing Co., Yuma, Arizona.....	125 00
N. R. Thomsen	313 66
Talbot & Hubbard, Phoenix, Arizona.....	50
Letis R. Templin, Phoenix, Arizona.....	5 00
The Desert Express, Yuma, Arizona.....	150 00
Union Oil Company, Phoenix, Arizona....	384 55

Western Union Telegraph Co., Phoenix, Arizona	5 58
Welker & Son Transfer Co., Safford, Ari- zona	165 01
Yuma Central Auto Co., Yuma, Arizona..	6 60
Western Builders, Phoenix, Arizona.....	639 49
M. L. Vieux, Phoenix, Arizona.....	55 00
The Gazetteer Pub. & Printing Co., Denver, Colo	15 00
Plaza Stone Cottages, Miami, Arizona....	12 25
Total	9,643 24

LEO FRANCIS,
Petitioner. [237]

SCHEDULE A. (4)

LIABILITIES ON NOTES OR BILLS DISCOUNTED WHICH OUGHT TO BE PAID BY THE DRAWERS, MAKERS, ACCEPTORS OR INDORSERS.

(N. B.—The dates of the notes or bills, and when due, with the names, residences and the business or occupation of the drawers, makers, acceptors or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.)

Reference to Ledger or Voucher.—	AMOUNT
Names of holders so far as known. —Residence (if unknown, that fact must be stated). — Place where contracted.—Nature of liability, and whether same was contracted as partner or joint contractor or with any other person; and if so, with whom.	None.
TOTAL	

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14. LEO FRANCIS, Petitioner. [238]

SCHEDULE A. (5)

ACCOMMODATION PAPER.

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the drawer be liable as a drawer, maker, acceptor, or indorser thereof, this is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. State particulars as to other commercial paper.)

Reference to Ledger or Voucher.— Names of holders.— Residence if unknown, (if fact must be stated).— Names and residences of persons accommodated.— Place where contracted.— Whether liability was contracted as partner or joint contractor, or with any other person; and if, with whom.	AMOUNT
None.	
	TOTAL.....

LEO FRANCIS, Petitioner. [239]

Full sets of schedule blanks must be used. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule blank must be signed.)—Rule 14.

SCHEDULE A. (4)

LIABILITIES ON NOTES OR BILLS DISCOUNTED WHICH OUGHT TO BE PAID BY THE DRAWERS, MAKERS, ACCEPTORS OR INDORSERS.

(N. B.—The dates of the notes or bills, and when due, with the names, residences and the business or occupation of the drawers, makers, acceptors or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.)

Reference to Ledger or Voucher.—
Names of holders so far as known.—
Residence (if unknown, that fact must be stated).—
Place where contracted.—Nature of liability, and whether same was contracted as partner or joint contractor or with any other person; and if so, with whom.

AMOUNT

None.

TOTAL

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

LEO FRANCIS, Petitioner. [238]

SCHEDULE A. (5)
 ACCOMMODATION PAPER.

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the bankrupt be liable as a drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. State particulars as to other commercial paper.)

Reference to Ledger or Voucher.— Names of holders.— Residence (if unknown, that fact must be stated).— Names and residences of persons accommodated.— Place where contracted.— Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.	AMOUNT
None.	
	TOTAL.....

LEO FRANCIS, Petitioner. [239]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

OATH TO SCHEDULE A.

United States of America,
Federal District of Arizona,—ss.

In the Matter of Momsen-Dunnegan-Ryan Co. et al.,
Petitioners, vs. Phoenix Plumbing and Heating
Company, Leo Francis, Doing Business Under
the Name and Style of Phoenix Plumbing &
Heating Company, et al., Alleged Bankrupts
in Bankruptcy No. B.-522—Phoenix.

On this —— day of September, A. D. 1929, before
me personally came Leo Francis, the person men-
tioned in and who subscribed to the foregoing Sched-
ule, and who being by me first duly sworn, did
declare the said Schedule to be a statement of all his
debts, in accordance with the Acts of Congress re-
lating to Bankruptcy.

LEO FRANCIS.

Subscribed and sworn to before me this 17th
day of September, 1929.

[Seal]

O. E. SCHUPP,
Notary Public.

My commission expires February 13, 1932.

(This Oath to Follow Schedule A-5.) [240]

SCHEDULE B. (2)
PERSONAL PROPERTY

		Dollars	Cents
A. Cash on hand.			None
B. Bills of exchange, promissory notes, or securities of any description (each to be set out separately).			None
C. Stock in trade in business of at of the value of	Plumbing & Heating, 316 N. 6th Ave., Phoenix, Ariz., about \$3,000.00: Consists of plumbing supplies of all kinds, pipe, lead, brass fixtures, connections, etc.	3,000	00
D. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz:	Plumbing supplies at Yuma, purchased for Yuma High School Job but not used in construction of building, about	500	00
	Wearing apparel and ornaments	50	00
E. Books, prints, and pictures, viz:	Cash-book, account receivable book, Contract-book and time-book, no particular value.		
F. Horses, cows, sheep and other animals (with number of each), viz:			None.
G. Carriages and other vehicles, viz:	1 Star Truck, \$50.00; 1 Chevrolet truck, \$200.00, (claimed exempt), and 1 Ford Truck, \$150.00	400	00

H. Farming stock and implements of husbandry, viz:

None.

I. Shipping and shares in vessels, viz:

None.

K. Machinery, fixtures, apparatus and tools used in business, with the place where each is situated, viz:

1-Toledo power drive thread cutting machine \$100.00; 1-Bench vice \$25.00; 1-36" Stilson wrench \$2.50; 1-36" Chain tong \$2.50; 1 pipe cutter from 2½ to 4" \$4.00; 1 claw-hammer \$0.35¢; 1-ball peon-hammer \$0.50; 1-single jack-hammer \$0.75; 1 monkey-wrench \$0.50; 4-rock points \$1.00; 2-cold chisels \$0.70¢; 1-14" Stilson \$1.00; 1-10" Stilson \$0.75¢; 2-18" Stilson \$2.50; 2-24" Stilson \$3.00; 1-trimo pipe cutter from ¼ to 2" \$2.50; 1-#1A Toledo stocks from 1 to 2" \$8.00; 1-#0 Toledo stocks from ¾ to 1" \$5.00; 1-Toledo stocks from 2½ to 4", \$15.00; 1-pipe reamer \$0.00; 1-brace & bit \$0.75, 1-rod spud wrench \$1.00. Total..... 177 30

L. Patent, copyrights and trademarks, viz:

All claimed as exempt. L. none. M. none.

M. Goods or personal property of any other description, with the place where each is situated, viz:

Total..... 4,127 30

LEO FRANCIS, Petitioner. [241]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

SCHEDULE B.
 STATEMENT OF ALL PROPERTY OF BANKRUPT.
 SCHEDULE B. (1)
 REAL ESTATE.

Location and description of all real estate owned by debtor, or held by him. Incumbrances thereon, if any, and dates thereof. Statement of particulars relating thereto.	ESTIMATED VALUE
--	--------------------

None.

TOTAL.....

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

LEO FRANCIS, Petitioner. [242]

SCHEDULE B (3)
 CHOSSES IN ACTION.

		Dollars	Cents
A. Debts due petitioner on open account.	See separate sheets following.....	\$3,724	24
B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds.	None.		
C. Policies of Insurance.	Aetna Life Insurance Company, Hartford, Connecticut		00 00
D. Unliquidated claims of every nature, with their estimated value.	See separate sheets following.....	35,657	79
E. Deposits of money in banking institutions and elsewhere.	None.		
TOTAL.....		39,383	03

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

LEO FRANCIS, Petitioner. [243]

Schedule B-3-A.

ACCOUNTS RECEIVABLE.

A. Z. Root Beer Co., Phoenix, Arizona	1.50
Arizona Landscape Gardners, Phoenix, Arizona	36.75
Mr. Atwater, c/o Phoenix Linen Supply Co., Phoenix, Arizona	19.90
Mrs. Anderson, 1760 E. Princeton St., Phoe- nix, Arizona	5.30
Mrs. Archer, 101 E. Coronado St., Phoenix, Ariz.	18.00
Mrs. Abraham, 900 E. Moreland, Phoenix, Arizona	1.00
Arizona Sales Co., 306 N. Center St., Phoe- nix, Ariz.	31.00
Mrs. Antrim, 905 W. Palm Lane, Phoenix, Arizona	1.35
Arizona Garment Mfg. Co., Phoenix, Ari- zona	35.75
Beers & Clever, Phoenix, Arizona	27.05
L. M. Byrd, 1325 W. Monroe St., Phoenix, Arizona	22.15
Fred Barrows, 1721 W. Jefferson St., Phoe- nix, Arizona	3.50
W. E. Brooks, 12 S. 18th Avenue, Phoenix, Arizona	4.95
B. A. Banks, 1226 E. Garfield St., Phoenix, Arizona	1.75
Booker T. Washington Hospital, 1342 E. Jefferson St., Phoenix	2.40
A. C. Baker, 1422 N. Central Ave., Phoenix.	14.60
Bob Baker, 929 E. Coronada St., Phoenix, Arizona	5.15

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Bob Brazee, 1043 E. Highland Ave., Phoenix, Arizona	9.35
Dr. Brown, 1106 W. Washington St., Phoenix, Ariz.	120.63
Mr. Balke, Balke Bldg., Phoenix, Arizona .	4.50
O. R. Bell, Phoenix, Arizona	2.00
Central Arizona Light & Power Co., Phoenix, Arizona	4.00
Ethel Clark, 1218 W. Monroe St.	15.35
Mr. Cousins, 751 E. Van Buren St., Phoenix, Ariz.	12.00
Mr. Coulson, 1125 N. 2nd St., Phoenix, Arizona	1.75
J. J. Cox, 2230 N. 7th St., Phoenix, Arizona.	2.60
Mrs. E. S. Caldren, 1125 N. 2nd St., Phoenix, Arizona	1.50
C. C. Cragin, 517 W. McDowell Road, Phoenix, Arizona	3.20
Mrs. Carnes, 328 N. 4th Ave., Phoenix, Arizona	30.00
Otto Christopher, 1006 S. 3rd Ave., Phoenix, Arizona	2.65
Crane Co., Phoenix, Arizona	5.00
Jas. Coster, 375 N. 6th Avenue, Phoenix, Arizona	2.20
F. M. Corwin, 841 N. 7th Avenue, Phoenix, Arizona	2.25
Maricopa Tuberculosis Hospital, Phoenix, Arizona	4.95
Mc. Connell, 64 W. Holly St., Phoenix, Arizona	2.65
W. G. Dodson, 623 W. Adams St., Phoenix, Arizona	14.65

R. E. Davey, 702 E. Jefferson St., Phoenix, Arizona	3.75
Dean's Grocery, 703 N. 2nd St., Phoenix, Arizona	10.90
Mr. Dorris, Indian School Road & 9th Ave., Phoenix, Ariz.	4.00
Mrs. Dougherty, 900 N. 7th St., Phoenix, Arizona	3.00
Mrs. Mary Dunlap, 330 W. Latham St., Phoenix, Ariz.	2.55
H. S. Dorman, c/o Lincoln Mortgage Co., Phoenix, Arizona	4.85
W. W. Dunn, 1141 W. Lincoln St., Phoenix, Arizona	1.75
Mrs. Betty Dameron, 804 N. 5th Ave., Phoe- nix, Arizona	11.75
Dixie Hotel, 4th Avenue & Washington St., Phoenix, Arizona	3.05
C. B. Evans, 1215 Woodlawn Avenue, Phoe- nix, Ariz.	3.50
W. A. Evans, 3320 N. Central Avenue, Phoe- nix, Arizona	21.89
Mrs. T. L. Edens, 520 No. 9th Ave., Phoe- nix, Arizona	1.50
Mrs. Ellios, 340 W. Latham St., Phoenix, Arizona	9.20
Harold Foote, 2028 W. Monroe St., Phoenix, Arizona	1.50
Mrs. V. C. Ferguson, 4029 N. Vernon St., Phoenix, Arizona	5.00
J. Fundenburg, 318 N. 6th Avenue, Phoenix, Arizona	2.60
Five Points Barber Shop, Phoenix, Ari- zona	2.50

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E. L. Freeland, 100 W. Roosevelt St., Phoenix, Arizona	5.15
First Baptist Church, 3rd Ave., & Monroe Sts., Phoenix	3.45
Mrs. J. Friedman, 1126 E. Willetta St., Phoenix, Ariz	1.50
First Methodist Church, 2nd Ave. & Monroe Sts., Phoenix	4.30
Mr. Foster, c/o Barber Shop	1.95
Mrs. D. Francis, 88 Mitchell Drive, Phoenix, Ariz.	2.50
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Schedule B.-3-A.

Accounts Receivable—Continued.

Mr. Gold, 225 E. Washington St., Phoenix, Arizona	1.50
Mrs. Galbraith, 1410 N. 2nd St., Phoenix, Arizona	6.15
B. M. Guffith, 1595 E. McDowell, Phoenix, Arizona	5.90
Mr. Goyer, 337 N. 6th Ave., Phoenix, Arizona	6.75
Nick Gannis, 415 Oakland Street, Phoenix, Arizona	4.50
Fred Gardner, 916 S. 7th Ave., Phoenix, Arizona	5.83
Walter Godman, Phoenix, Arizona	29.16
H. U. Gold, 1114 N. 2nd St., Phoenix, Arizona	12.00
H. Grimshaw, 390 N. 4th Avenue, Phoenix .	2.25
Mr. Giveno, 634 N. 2nd Avenue, Phoenix, Arizona	3.40

Mrs. A. E. Holmer, 2005 W. Adams St., Phoenix, Ariz.	19.75
Mr. Henderson, 801 N. 10th Avenue, Phoe- nix, Ariz.	3.00
Marshall Humphrey, 1021 E. Willetta St., Phoenix, Arizona	9.05
Miss Paul, c/o Lincoln Mortgage Co., Phoe- nix, Arizona	3.85
Samuel Haldeman, 15 W. Washington St., Phoenix, Ariz.	6.35
Hollywood Service Station, 902 W. Van Bu- ren St., Phoenix	27.48
F. J. Halterman, 1202 W. Adams, Phoenix, Arizona	2.00
Mr. Hunt, 417-15 Oakland St., Phoenix, Ariz.	2.85
L. G. Harvey, 1122 W. Latham St., Phoenix, Arizona	7.27
Hi-Way Coffee Shop, Phoenix, Arizona ...	4.10
Mrs. Harvey, 108 N. 21st Ave., Phoenix, Arizona	1.25
Mr. Hoagland, 127 E. Palm Lane, Phoenix, Arizona	7.51
Mrs. J. B. Harrison, 704 N. Central Ave., Phoenix, Ariz.	2.75
Mrs. Humphreys, 822 N. 6th Ave., Phoenix, Arizona	16.55
Mr. Hyder, 511 N. 5th St., Phoenix, Arizona	4.15
Henderson Bros., N. 7th Ave., Phoenix, Arizona	1.75
Ingleside Inn, Phoenix, Arizona	59.65
G. W. Johns, 217 N. 16th Avenue, Phoenix, Arizona	3.20

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Dalton Johnson, 2134 W. Jefferson St., Phoenix, Ariz.	2.60
Geo. A. Johnson, Toggery Shop, Mesa, Ari- zona	9.45
H. A. Jones, Five Points, Phoenix, Arizona.	4.42
Mr. Johnson, 1010 W. Madison St., Phoenix, Ariz.	2.15
Jesse Hat Shop, Phoenix, Arizona	6.58
Mr. Johnson, 1107 Grand Avenue, Phoenix, Arizona	1.10
R. C. Ketchum, 401 N. 7th Avenue, Phoenix, Arizona	37.90
Mrs. Helen Kinsella, 610 N. 4th Avenue, Phoenix, Ariz.	5.70
B. Kilepher, 806 N. 3rd Avenue, Phoenix, Arizona,	2.60
P. M. Kerrick, 81 W. Willetta St., Phoenix, Ariz.	2.55
Mrs. Kolling, 374 Verde Lane, Phoenix, Ari- zona	3.50
Mrs. Harry Konophy, Phoenix, Arizona ...	1.50
Lorraine Beauty Shop, 210 O'Neil Bldg., Phoenix, Ariz.	14.10
D. A. Little, 2109 W. Filmore St., Phoenix, Arizona	2.65
G. H. Lutgerding E. Country Drive, Phoe- nix, Arizona	21.90
Lebanon Hotel, 333 N. 2nd Avenue, Phoe- nix, Arizona	98.95
Mrs. Thomas Lewis, 712 S. 7th St., Phoenix, Arizona	50.68
Mrs. Lane, 42 W. Culver St., Phoenix, Ari- zona	3.85

Mrs. Lindquist, 608 W. Van Buren St., Phoenix, Arizona	2.80
L. L. Lindsey, 1310 W. Moreland St., Phoe- nix, Arizona	1.89
Mrs. T. R. Lewis, 421 Southern Avenue, Phoenix, Arizona	21.72
Lincoln Mortgage Co., 1513 W. Taylor St., Phoenix, Ariz.	4.10
Mrs. R. Littlefield, 622 N. 6th Ave., Phoenix, Arizona	1.50
Mrs. Luke, 715 E. Washington St., Phoenix, Ariz.	2.65
Maricopa County, Phoenix, Arizona	128.90
Mrs. Mitchell, 507 E. Moreland St., Phoenix, Ariz.	3.50
H. L. Medinger, 158 W. Merrill St., Phoe- nix, Arizona	9.10
Mrs. J. H. More, 524 W. Portland St., Phoe- nix, Ariz.	8.20
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Schedule 3-B.-A.

Accounts Receivable—Continued.

Mr. Moss, 46 W. Lewis St., Phoenix, Ari- zona	1.45
Mr. E. W. Montgomery, 537 E. Moreland St., Phoenix, Ariz.	6.95
Moeller Apartments, 2nd Ave. & Filmore St., Phoenix	11.75
Modern Auto Court, 1930 W. Van Buren St., Phoenix, Ariz.	5.25
Mrs. Mathias, 816 N. 2nd St., Phoenix, Ariz.	4.75
Lee Moffitt, Phoenix, Arizona	31.28

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L. W. McHattan, 1114 W. Lynwood St., Phoenix, Ariz.	8.80
Mc McCray, 2615 N. 16th St., Phoenix, Ariz.	1.75
C. F. McConnell, Casa Grande, Arizona	158.11
Norman Landscape Gardeners, 1509 N. Central Ave., Phoenix	38.46
North Central Coffee Shop, 506 N. Central Ave., Phoenix.	55.40
Mrs. Nile, 1111 W. Adams St., Phoenix, Ari- zona	29.50
W. H. Nelson, Phoenix, Ariz.	5.40
Newcomers Realty Co., Phoenix, Arizona ..	1.60
Mr. Nickerson, 840 N. 1st Avenue, Phoenix, Ariz	1.75
A. D. Nace, 1540 W. Washington St., Phoe- nix, Arizona	28.59
J. E. Nelson, 1705 W. Jefferson St., Phoe- nix, Arizona	6.15
Mrs. H. L. Nace, 1546 W. Washington St., Phoenix, Ariz.	3.10
W. D. Northern, Phoenix, Arizona	7.50
New York Bakery, 248 E. Washington St., Phoenix, Ariz.	73.20
J. G. O'Malley, 1202 N. 2nd St., Phoenix, Arizona	2.05
Phoenix Union High School District, Phoe- nix, Ariz.	1.75
E. E. Pascoe, 14 E. Adams St., Phoenix, Arizona	3.35
Wm. Pepper, 1st St. & McKinley, Phoenix, Ariz.	115.00

F. L. Perry, 722 N. 7th St., Phoenix, Arizona	1.35
R. H. Parsons, 1422 N. 2nd St., Phoenix, Ariz.	12.20
Mrs. Palmer, 315 E. Thomas Road, Phoenix, Ariz.	2.00
Phoenix Tent & Awning Co., 226 W. Adams St., Phoenix, Ariz. ....	.56
Phoenix Hotel, 1st & Jefferson Sts., Phoenix, Ariz.	2.00
J. B. Petty, 1345 Grand Avenue, Phoenix, Arizona	4.45
Phoenix Lunch Room, 231 E. Washington St., Phoenix, Ariz.	8.90
Pay'n Takit Garage, 5th Ave. & Washington Sts., Phoenix	18.75
Mr. Rubenstein, 2028 Richland Ave., Phoenix, Ariz.	29.25
Ranch House Land Co., 16 W. Roosevelt St., Phoenix, Ariz.	4.35
L. H. Rhuart, 720 E. McDowell, Phoenix, Arizona	12.20
R. G. Reid, 2529 Dayton St., Phoenix, Arizona	3.30
Jas. Rymer, c/o Packard Motor Co., Phoenix, Ariz.	28.95
Mr. Randell, 1310 W. Willetta St., Phoenix, Ariz.	5.85
Mrs. S. B. Richards, 810 N. 1st Ave., Phoenix, Ariz	5.20

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D. Rubenstein c/o Western Builders, Phoenix, Ariz.	14.22
State of Arizona, Phoenix, Arizona	91.63
Mrs. Lee, 140 N. Central Ave., Phoenix, Ariz.	9.95
Standard Sanitary Mfg. Co., Phoenix, Arizona	517.85
Mr. Shackelford, 231 W. Jefferson St., Phoenix, Ariz.	1.50
Mr. Stellar, 925 N. 9th Ave., Phoenix, Ariz.	1.45
Mr. Stillet, 825 N. 9th Ave., Phoenix, Arizona	1.75
H. L. Stine, 1819 W. Jefferson St., Phoenix, Ariz.	101.20
R. F. Soule, 1336 E. Moreland, Phoenix, Ariz.	1.25
Stearnman Construction Co., Phoenix, Arizona	72.45
Mrs. Shaw, 72 Mitchell Drive, Phoenix, Arizona	4.50
Dr. Stoner, 429 Ellis Bldg., Phoenix, Arizona	4.40
S. A. Sprague, 834 E. Palm Lane, Phoenix, Arizona	1.00
Ralph Summers, 1217 E. Culver St., Phoenix, Arizona	7.10
T. J. Smith, 1221 E. Monroe St., Phoenix, Arizona	18.20

Schedule 3-B.-A.

Accounts Receivable—Continued.

Southwestern Mfg. Co., Phoenix, Arizona..	135.05
Mrs. Stevens, 1204 W. Washington St., Phoenix, Ariz.	1.35
Mr. Stone, 743 E. Portland St., Phoenix, Ariz.	2.80
Star Sheet Metal Works, Phoenix, Arizona	2.40
Mr. Treadwell, 1027 N. 11th St., Phoenix, Arizona	4.50
Mr. Towne, 4024 N. Vernon, Phoenix, Ari- zona	6.55
H. R. Tritle, 611 N. Central Ave., Phoenix, Ariz.	1.25
E. W. Thayer, Phoenix, Arizona	171.47
Mr. Towles, 756 E. Moreland St., Phoenix, Arizona	3.10
J. Thornton, 333 W. Latham St., Phoenix, Ariz.	6.10
Mrs. H. B. Tracy, Phoenix, Arizona	4.05
Mr. Turley, Tempe, Arizona	21.00
W. A. Thompson Electrical Co., 123 W. Adams St., Phoenix, Ariz.	1.18
Mr. Taylor, 2021 Alvarado St., Phoenix, Arizona	15.50
W. H. Tate, 720 N. 7th Ave.	1.25
J. C. Tudy, Woodlea St., Phoenix, Arizona.	11.95
Mr. Tootle, 955 W. Moreland St., Phoenix, Ariz.	30.80
Mr. Urban, 636 N. 3rd Ave., Phoenix, Ariz.	2.90
G. W. Vickers, 840 N. 1st Ave., Phoenix, Ariz.	5.75

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E. O. Van Rheim, 313 N. 20th Ave., Phoenix, Ariz.	4.50
Mr. Woodbridge, R. F. D. #7, Box 1180, Phoenix, Arizona	9.20
Mr. Warren, 825 E. Sheridan St., Phoenix, Ariz.	2.00
J. M. Wilson, 404 N. 7th Ave., Phoenix, Ariz.	11.75
Mr. Williams, 1218 N. 3rd St., Phoenix, Ariz.	3.50
M. E. Waddoups, 2020 N. Central Avenue, Phoenix, Ariz.	7.90
J. W. Walker, Ellis Bldg., Phoenix, Arizona	58.10
Winser Mule Market, Phoenix, Arizona....	3.70
Mrs. Grace Wright, 1722 W. Jackson St., Phoenix, Ariz.	6.11
Elmer Warren, 1508 W. Filmore St., Phoe- nix, Ariz.	15.00
W. A. Walker, 2107 W. Adams St., Phoenix, Arizona	7.95
W. A. Washburn, 324 N. 9th Avenue, Phoe- nix, Arizona	6.55
Mr. Winship, 715 N. 12th Ave., Phoenix, Ariz. ....	.75
Mr. Warren, 612 N. 5th Ave., Phoenix, Ari- zona	1.00
E. B. Walluk, 85 W. Willetta St., Phoenix, Arizona	7.20
Mrs. Hannah White, 1715 W. Van Buren St., Phoenix, Ariz.	1.50
Mr. T. B. Williams, 817 N. 4th Ave., Phoe- nix, Ariz.	12.95

Mrs. Weener, 817 W. McKinley St., Phoenix, Arizona	4.50
Mr. Weatherbee, 2126 W. Jefferson St., Phoenix, Ariz.	9.90
J. L. Walker, 649 N. 4th Ave., Phoenix, Arizona	36.54
Tom Weatherford, Contractor, Phoenix, Arizona	72.74
A. F. Waselewski Construction Co., Phoenix, Arizona	65.49
Dr. Wilkinson, 925 E. McDowell, Phoenix, Arizona	5.05
Mr. Wolfe, 1014 N. Central, Phoenix, Arizona	1.75
E. S. Walker, 503 E. Willetta St., Phoenix, Ariz.	4.10
D. A. Wagner, 302 E. Pierce St., Phoenix, Ariz.	6.35
Western Builders, Phoenix, Arizona	1.75
Mrs. John Webber, Phoenix, Ariz.	1.85
T. B. Williams, Phoenix, Arizona	2.00
Mr. Yeager, 544 E. Lynwood St., Phoenix, Arizona	25.05
J. Zurite, 233 E. Jefferson St., Phoenix, Arizona	6.08

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Schedule B.-3-D

UNLIQUIDATED CLAIMS.

Backowitz Apartments, Phoenix, Arizona, Mechanic's lien filed and being fore- closed. Estimated.....	2,600.00
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324 *Standard Sanitary Manufacturing Company.*

O. R. Bell, Phoenix, Arizona. Job 12th Ave. and Van Buren St.....	149.66
O. R. Bell, Phoenix, Arizona. Job 23 W. Monroe St. Phoenix, Arizona.....	287.91
W. H. Brown Contractor State Hospital for the Insane; Contract and extras \$7270.05, credits \$4,080.00, balance assigned May 7, 1929, to Standard Sanitary Mfg. Co., Phoenix, Arizona.....	3,190.05
James Barnes, Phoenix, Arizona, Latham Street Job, Assigned to Crane Company	71.49
Cabel Job, Phoenix, Arizona, 7th & Desert Sts. Charges \$190.60, credits \$25.00; thinks another \$25.00 payment made but not credited, about.....	140.60
City of Phoenix, New City Hall. Contract \$23,233.85, credits \$14,526.00, balance assigned to Standard Sanitary Mfg. Co., Phoenix, Arizona, on May 7, 1929.....	8,707.85
This job taken over by Southern Surety Company, bondsman, for completion.	
Eagan Construction Co., Phoenix, Arizona; deanery for Trinity Cathedral.....	238.90
Elliott Engineering Co. Contract on Washington School; Contract and extras \$714.05; Owes Elliott Engineering Company about \$2600.00 over and above this amount	00.00
Green & Hall, contractors, Phoenix, Arizona, Dan Campbell Job; Charges \$1597.55, credits \$900.00, balance	

vs. Momsen-Dunnegan-Ryan Company et al. 325

\$697.55; \$500.00 assigned to Crane Company, balance	197.00
Green & Hall, Phoenix, Arizona; Old residence; extras	11.50
Green & Hall, Phoenix, Arizona, W. W. Knorpp residence; charged \$3107.98; credits \$2930.30; balance	177.68
Green & Hall, Phoenix, Arizona, Dowell Contract	254.00
Green & Hall, Phoenix, Arizona, E. J. Bennett Residence. Balance due, estimated	1,968.86
Green & Hall, Phoenix, Arizona, Schwenker Residence. Contract \$2934.00, credits, \$1300.00; balance, \$1634.00. Job taken taken over by Massachussets Bonding Company for completion at cost of about \$300.00; balance about.....	1,334.00
Balance assigned to Crane Company.	
Harvey & Reed, Contractors Washington School Charges	69.08
Litchfield School District, Litchfield School. Contract & Extras, \$2077.70; credits \$2020.00 balance	57.70

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Schedule B.-3-D.

Unliquidated claims—Continued.

Hagan & Farmer, Contractors, Marana Teachers College, Marana, Arizona, balance due about.....	100.00
Mesa Bank Building, Mesa, Arizona. Don't know. Looks like overpaid.....	

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E. W. Michael, Phoenix, Arizona; balance due	135.50
H. A. Patterson, Contractor, Res. 355 E. Palm Lane	42.54
Wm. Pepper, Contractor, Lutheran Church, charges \$594.50, credits \$297.25; offset by what <i>owes</i> Pepper.....	00.00
Phoenix Union High School District, Phoenix, Arizona; Central Heating Plant; contract and extras \$29,326.10; credits \$25,819.00, balance assigned May 7, 1929, to Standard Sanitary Mfg. Co., Phoenix, Arizona	3,507.10
Job taken over by Massachussets Bonding Company for completion.	
Phoenix Union High School District, Phoenix, Arizona; Junior College Building; contract and extras \$8,424.00; credits, \$6,318.00, balance assigned to Standard Sanitary Mfg. Co., May 7, 1929.....	2,106.00
Job still uncompleted.	
Phoenix Union High School District, Phoenix, Arizona; Library and class room building; contract and extras \$18,860.12; credits \$9,450.00; balance assigned May 7, 1929, to Standard Sanitary Mfg. Co., Phoenix, Arizona	9,410.12
This job taken over by American Bonding Company for completion.	
Joe Samardo, Phoenix, Arizona; balance due	60.00

Southern Prison Company, contract on city Hall	375.00
J. W. Tucker, Contractor, Phoenix, Arizona, Mel Fickas residence, about.....	100.00
Mr. Taylor, 2021 Elvarado St., Phoenix, Arizona	166.25
Yuma High School District, Yuma, Ari- zona; Contract \$5717.00; credits \$2997.- 08; This job taken over by Massachu- setts Bonding Company for comple- tion	00.00
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SCHEDULE B. (4)

PROPERTY IN REVERSION, REMAINDER OR EXPECTANCY, INCLUDING PROPERTY HELD IN TRUST FOR THE DEBTOR, OR SUBJECT TO ANY POWER OR RIGHT TO DISPOSE OF OR TO CHARGE.

(N. B.—A particular description of each interest must be entered. If all, or any of the debtor's property has been conveyed by deed or assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as it is known to the debtor.)

General Interest.	PARTICULAR DESCRIPTION	Supposed Value of My Interest	
		Dollars	Cents
Interest in land.	None.		
Personal Property.	None.		
Property in money, stock, shares, bonds, annuities, etc.	None.		
Rights and powers, legacies and bequests.	None.		
Total.....			

Property heretofore conveyed for the benefit of creditors.

See Schedule A-2—showing assignments of contracts.

Amount realized from proceeds of property Conveyed

What portion of debtor's property has been conveyed by deed or assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.

None except as above stated.

What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.

None.

Total.....

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

SCHEDULE B. (5)

A particular statement of the property claimed as exempted from the operation of the Acts of Congress relating to Bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description and present use.

Military uniform, arms and equip- ments.	Valuation	
	Dollars	Cents
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.	Wearing apparel and ornaments	50 00
N. B.—This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months, or the greater portion thereof, immediately preceding the filing of the petition.	1-Toledo power drive thread cutting machine	100 00
	1 bench vice	25 00
	1-36" Stilson wrench	2 50
	1-36" chain tong	2 50
	1 pipe cutter from 2½ to 4"	4 00
	1-claw-hammer	35
	1 ball peon-hammer	50
	1 single jack-hammer	75
	1 monkey-wrench	50
	4 rock points	1 00
	2 cold chisels	70
	1-14" Stilson wrench	1 00
	1-10" Stilson wrench	75
	2-18" Stilson wrenches	2 50
	2-24" Stilson wrenches	3 00
	1 Trimo pipe cutter from ¼ to 2"	2 50
	1-#1 A. Toledo stocks from 1 to 2".....	8 00
	1-#0 Toledo stocks from ⅜ to 1"	5 00
	1-Toledo stocks from 2½ to 4".....	15 00
	1 pipe reamer	0 00
1 brace and bit	75	
1 rod spud wrench	1 00	
	Total.....	427 30

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

OATH TO SCHEDULE B.

In the Matter of Momsen-Dunnegan-Ryan Co. et al.,
Petitioners, vs. Phoenix Plumbing and Heat-
ing Company, et al., Alleged Bankrupts. In
Bankruptcy. No. B.-522-Phoenix.

United States of America,
Federal District of Arizona,—ss.

On this — day of September, A. D. 1929, be-
fore me personally came Leo Francis, one of the
persons mentioned in and who subscribed to the
foregoing Schedule and who being by me first duly
sworn, did declare the said Schedule to be a state-
ment of all his estate, both real and personal, in
accordance with the Acts of Congress relating to
Bankruptcy.

LEO FRANCIS.

Subscribed and sworn to, before me, this 17th
day of September, 1929.

[Seal]

O. E. SCHUPP,
Notary Public.

My commission expires February 15, 1932. [253]

SUMMARY OF DEBTS AND ASSETS.

From the statements of the bankrupt in Schedules A and B.

		Dollars	Cents
Schedule A.	1. (1) Taxes and debts due the United States..	None	
	1. (2) Taxes due States, Counties, Districts and Municipalities	322	91
	1. (3) Wages	169	00
	1. (4) Other debts preferred by law.....		
Schedule A.	2. Secured claims	48,136	44
Schedule A.	3. Unsecured claims.....	21,943	24
Schedule A.	4. Notes and bills which ought to be paid by other parties thereto.....		
Schedule A.	5. Accommodation paper		
	Schedule A, Total	70,571	59
Schedule B.	1. Real Estate		
Schedule B.	2. a Cash on hand		
	2. b Bills, promissory notes, and securities...		
	2. c Stock in trade	3,500	00
	2. d Household goods, etc.	50	00
	2. e Books, prints and pictures.....		
	2. f Horses, cows and other animals.....		
	2. g Carriages and other vehicles	400	00
	2. h Farming stock and implements.....		
	2. i Shipping and shares in vessels.....		
	2. k Machinery, tools, etc.	177	30
	2. l Patents, copyrights and trade-marks....		
	2. m Other personal property		

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Schedule B.	3. a	Debts due on open accounts.....	3,724 24
	3. b	Stocks, negotiable bonds, etc.	
	3. c	Policies of insurance	00 00
	3. d	Unliquidated claims	35,658 79
	3. e	Deposits of money in banks and elsewhere	
Schedule B.	4.	Property in reversion, remainder, trust, etc.	
Schedule B.	5.	Property claimed to be exempt.....	\$427.30
Schedule B.	6.	Books, deeds and papers	
		Schedule B, Total.....	<u>43,510 33</u>

(N. B.—This summary Blank must be filled out and properly footed.)

LEO FRANCIS, Petitioner. [254]

Back of Exhibit:

No. B.-522.

U. S. District Court, Federal District of Arizona,
Phoenix Division.

In the Matter of MOMSEN-DUNNEGAN-RYAN
COMPANY et al.,

Petitioning Creditors,

vs.

PHOENIX PLUMBING & HEATING COM-
PANY et al.,

Alleged Bankrupts.

PETITION AND SCHEDULES.

O. E. SCHUPP,

Attorneys for Bankrupt.

(P. O. Address)

507 Luhrs Bldg., Phoenix, Arizona.

Filed Sept. 18, 1929. C. R. McFall, Clerk,
United States District Court for the District of
Arizona. By Archie L. Gee.

Report of Special Master. Filed Feb. 18, 1930.
C. R. McFall, Clerk, United States District Court
for the District of Arizona. By F. H. Schlittler.

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Whereupon Petitioners' Exhibits 1 to 9, inclu-
sive, and No. 12 for Identification, were received in
evidence and marked Petitioners' Exhibit 7 in Evi-
dence, all as one exhibit. These exhibits are of
such a nature that copying is impossible, and the
originals are filed with this record.

TESTIMONY OF LEO FRANCIS, FOR PETITIONING CREDITORS (RECALLED).

(Examination by Mr. BIRDSALL.)

I came to Phoenix October, 1927. Lived in Oklahoma and Arkansas previously. Worked there for D. L. Francis, my brother, who had a business there. He came here 1st of September, 1927. I came October 18th, 1927. He started the business known as Phoenix Plumbing & Heating Company for me. I had \$1,800.00, Lyon put in \$1,100.00 for my father. D. L. Francis put in nothing. \$2,000 was originally put in business. Paid Remsbottom \$3,600.00 for the business. D. L. Francis bought it for me before I came. I was sole owner. Lyon put in the \$1,100 for my father. It came from Lyon but through my father. D. L. drew \$55.00 per week and expenses for getting work, that is rustling jobs and car expenses on trips. It was understood he was running business and had right to draw out money as he needed it. Dee is his only name. He wrote name D. Leo so I could sign too. That is his signature (referring to Petitioners' Exhibit 2 in Evidence) but my name. We were going to have joint name. This (Petitioners' Exhibit 3 in evidence) is Dee's signature. Dee had financial troubles before he came here. He did not make assignment for benefit of creditors in Fort Smith. He came here for his wife's health. I did not take \$55.00 per week, took what I needed. I furnished money and let him run it at same salary I got. We

(Testimony of Leo Francis.)

did not all draw same salary. I got least. From \$10.00 to \$55.00 per week. During last seven months I got \$55.00, Lyon got \$55.00, Dee was getting \$45.00. He also got his rent. His salary was carried in his wife's name. She got it every Saturday. I know nothing about books. I had book-keeper. I hired him April, 1928. He left June, 1929. Then I [256] hired Leo Fretz. Dee left in May or June. Lyon got \$1.25 per hour. Dee \$55.00 per week and expenses. First I took \$10 a week, then \$40 and then I took \$55. Had one checking account in bank for which Dee signed checks. Gehres countersigned them. I did not sign checks. Dee had separate check book. He had authority to draw checks. Lyon and myself did not. I don't know what he drew in 1929. I did not keep account of what he, D. Francis, drew from business or see what he was drawing out. I never examined books. I left that to Dee and Paul. In June I talked the situation over with Nihel and decided to let Dee go. He was not running business right. Creditors began to holler in March. I didn't think the business was going right; it kept on getting worse all the time. I talked it over with Nihel who advised me to let Dee go about the 1st of April, after the explosion. It had been discussed and I talked to D. L. before the explosion.

Q. They put the Phoenix Plumbing & Heating Company on a cash basis, did they? A. Yes.

Q. During April? A. Yes, ma'm.

Q. How long did that continue?

(Testimony of Leo Francis.)

A. Until about May, and then they gave them open account again.

Q. What was the understanding when they gave you open account again?

A. Mr. Fryberger was in there then with me.

Q. Did he come in the first of June?

A. Yes, the first of June; that was the time we began to have open account again.

Q. You gave some assignments to the Standard Sanitary [257] Manufacturing Company in May, didn't you? A. Yes.

Q. On the High School job and Central Heating Plant job? A. Yes.

Q. Did you make them, or did D. L.?

A. I made one or two,—no, I didn't make any on the Central Heating Plant; I made one on the Junior College.

Q. On the 7th of May? A. About that time.

Q. When you made those assignments, did the Standard Sanitary Company put you on open account again? A. Yes.

Q. That was why you made the assignments?

A. Yes.

Q. After the explosion they put you on a cash basis until you made the assignments?

A. There were several assignments made. When we would get in a pinch for material, and if he was uneasy, he took an assignment to help him out and we would go ahead and get our material.

Q. But he did put you on a cash basis for several weeks?

(Testimony of Leo Francis.)

A. We would not have to pay cash; we would have to pay at the end of each week.

Q. And they were not carrying you on open account as they had formerly? A. No.

Walter Godman is a repairman, no relation to me. We had four trucks, let him take one home because we had no room. I didn't give him a conditional sales contract. Godman never paid me anything for truck. Marie Francis, my sister worked in shop as bookkeeper. Mrs. Godman came for her husband's [258] checks. I employed Fryberger about June 1st when D. L. left. Mr. Nihel recommended him as an estimator and manager. I paid him \$250 per month. Fretz \$150.00 per month. Gehres started at \$125; later we gave him \$175 per month. Gehres kept books, looked out for bonds, had charge of office work, was good at figures and all round man. He had no money in business. D. L. said he borrowed some money off him at one time. I am not interested in the Arizona Garment Co. I don't know about D. L. D. L. worked at Garment factory a couple of months, but not now. I don't know if Phoenix Plumbing & Heating Co. borrowed money from Joe Thomas. He is distant cousin of mine. Not relative of D.'s wife. Father got money, a check of company, \$12 each per week, and a third was paid by each of us boys. He did not work in business. On August 17 I owed about \$40,000, at time petition in Bankruptcy was filed. Ledger and accounts receivable were not destroyed in explosion. We had several lists Mr. Fretz took

(Testimony of Leo Francis.)

off books, what we owed. We only could take from invoices. All books could not go in safe. Gehres had some of books home with him that night. He came in next morning with books. I did not know of explosion till next day. Explosion was on Sunday night. There were twelve keys to shop. I left Saturday noon. Don't know who was there when I left. Work on Bachowetz Apartments was done in April, 1928. I put lien on property December, 1928. Never got anything out of it. We thought it worth something in April, 1929, though the suit had been pending at that time for several months and the building was standing vacant and is not completed. All I know is that I did not get anything out of it. I had no property August 17, 1929, and the company had not enough money to pay bills on that date. [259] No property owned by any of us. Dee has a car. Dee turned his property and book accounts in Arkansas to Crane Co. about two months before he left there in 1927. Crane Company was his only creditor to speak of. I don't know what he owed back home. I asked a few questions around the shop after the explosion last April. All that were there were Dee, Gehres and Lyon. I did not talk to policemen or go to headquarters to ask investigation. Dee didn't either.

Q. How do you know Dee talked to the police?

A. I was in the shop that morning when the police was there.

Q. That was Monday morning? A. Yes.

(Testimony of Leo Francis.)

Q. You don't know whether he went to the station or not? A. No.

Q. Along about the 11th of July, did you have some conference with Mr. Fryberger and with Mr. Nihel in regard to making an assignment of all the property of the Phoenix Plumbing & Heating Company to Mr. Fryberger?

A. To Mr. Fryberger?

Q. Yes. A. No.

Q. Didn't you know that at that time an assignment was drawn up,—didn't you have some conferences about it? Wasn't it understood that an assignment was to be made? A. No.

I know nothing about this assignment. (Petitioners' Exhibit No. 11 for Identification.) I did not talk to anyone about it. I did arrange with Fryberger to give him one-third of the business if he pulled it out of hole. I did not hear of assignment to Fryberger in July. Fryberger said he could pull the business out in 11 or 12 months' time, and I [260] said if he did we would give him a third interest.

(Examination by Mr. DUFFY.)

In August I had shop, equipment, trucks, tools, etc., and contracts upon which money was due which if completed would bring in more than \$40,000. Trucks worth \$600 to \$800, equipment, tools, material, etc., \$4500. Standard Sanitary agreed to give us credit until we would realize on all our contracts. Crane Co. did not. They refused to

(Testimony of Leo Francis.)

help us that way. The Bank agreed to let us pay our bills after Fryberger came there.

Q. In April—on the 1st of April you weren't having any trouble then in meeting your accounts and making payments from time to time, were you?

A. Well, we were getting on all right for material at that time and on our labor.

Q. You were meeting all your obligations then within a reasonable time after they became due?

A. We weren't paying anything outstanding then.

Q. But you were paying on the outstanding things from time to time? A. Yes.

Q. At that time you were getting on all right and nothing to worry about? A. Yes.

All the assignments to Standard Sanitary were not made after explosion, some before. We gave assignment on City Hall job to Standard Sanitary on Nov. 5, 1928. Yuma High School on April 26, 1929. From 1927 on we gave assignments to Standard Sanitary on big jobs. I started High School Library job in August, 1928. The Heating Plant job in July, 1928. The real reason Standard Sanitary put me on cash [261] basis seemed to be because they did not think my manager was a good man. Only two or three assignments to Standard Sanitary were made after fire.

They were made on May 7th, 1929, and we were on open account before and after that date. In conference with Nihel and Fryberger it was agreed in June that we were sound financially in June, 1929. Fryberger went to work to cut out unneces-

(Testimony of Leo Francis.)

sary expense and pay off indebtedness from month to month. Only bad management blamed, no talk about having to go out of business. Mr. Fryberger began to get results for a while but the Bank bothered him so he did not have much time to work and Nihel took up with Bank need of leaving Fryberger alone to work. I filed lien on Bachowetz job and it has never been settled. At time Receiver was appointed I had five contracts, all public buildings and about the same number of small private contracts, and a lot of small jobs that weren't contract. (Examined by Mr. PHLEGAR.)

I am sole owner of Phoenix Plumbing & Heating Company. I bought it from Remsbottom in October, 1927. I was then in Oklahoma. My brother Dee acted for me. I gave him power of attorney, this is it. (Bankrupt's Exhibit No. 1 in Evidence.) Dee got bill of sale from Remsbottom. Dee or Lyon did not have any interest in business, don't have any now. Dee was manager, Lyon worked for me. I paid him \$1.25 per hour. If there was no work, he went home. Dee was manager until Fryberger supplanted him. Fryberger went in in June. I made agreement with Fryberger for third interest if he could pull the business out. Dee or Lyon had nothing to do with it. Our bookkeeper Gehres was a lawyer. He [262] looked after our legal business. He prepared and filed certain liens for us. I never told him that the three brothers were partners. After Bachowetz liens were filed Gehres found that affidavit of partnership was necessary to sup-

(Testimony of Leo Francis.)

port them. Afterward he prepared an affidavit of sole ownership which I signed and he told me it was recorded.

(Examined by Miss BIRDSALL.)

I went to Mr. Dains about Bachowetz apartments. I had other liens. They were not all filed as partnership liens. There were two or three of partnership. Mr. Dains drew up the affidavit. I was not there. Gehres explained partnership to Dains, so Mr. Dains told me. Bachowetz contract was \$3,700 on books—\$2,600 worth done at time job stopped. That is the amount of lien. We stopped because carpenters and everybody left the job and we couldn't go any further with it. I sent power of attorney to Dee in April, 1928, because I was at home with my mother until April in Oklahoma. Our attorney in Oklahoma drew it up. At the time of petition in bankruptcy was filed City Hall Job was finished. I testified this morning in answer to Mr. Duffy's question I had High School, Library, Central Heating Plant and Yuma High School job at time of petition and that I was stopped from finishing them by petition. It was true that one job was taken over by Bonding Co. and I did not have money to finish at that time. I don't know whether Standard Sanitary Company notified Bonding Company on City Hall job in August, that I could not pay bill and demanded \$16,000.00 payment from them.

Q. You were not prevented from finishing these

(Testimony of Leo Francis.)

jobs by the filing of the petition, but by the lack of money and credit, weren't you? A. Yes.

Q. And the filing of the petition in bankruptcy didn't stop [263] you, did it?

A. It stopped me.

Q. You couldn't get credit before that, could you? A. I couldn't get material.

Q. That was before the petition was filed?

A. We worked until three or four days before the petition was filed.

Q. On what job?

A. On the Ross job and the Mexican Church and the O. P. Johnson job.

Q. Yes, but on these larger jobs, I mean? You could not get material? A. That is correct.

Q. That was some time before the petition was filed, wasn't it? A. At least two weeks.

Q. When did the Standard Sanitary Company stop your credit on the Yuma building?

A. About the 15th of August.

Q. Had they not, some weeks before, refused to send you material there?

A. No. Mr. Nihel had me send my brother down and then there was a mistake on some of the fixtures.

Q. How long was that before the petition was filed? A. I would say about three weeks.

Q. You testified a while ago that you owed the Standard Sanitary Manufacturing Company more in August than you did in April. A. Yes.

Q. When you make that statement, are you taking into consideration that in June the Standard

(Testimony of Leo Francis.)

Sanitary Company got a [264] credit of \$13,000; isn't it true that you really owed them more in April than in August? They got \$13,000 from the Lincoln Mortgage Company in June, didn't they?

A. Yes.

Q. And they reduced their account by that amount? A. Yes.

Q. And in April of 1929 you owed them a balance of considerably more than in August, didn't you?

A. I wouldn't say.

Q. Don't you know that on the 1st of May, 1929, you owed the Standard Sanitary Manufacturing Company \$45,335.58?

A. Can you tell me what it was in August?

Q. In August it was \$38,563.16. The account at the present time is something like \$39,000.

A. I had forgotten about that \$13,000.

Q. You wish to correct your testimony, and you really owed them less in August than in April?

A. Yes.

After Fryberger took charge we got credit from Standard Sanitary, but not from Crane Co., but our stock in trade was not increased. We installed some heaters on 14th Street and did repair work. The Safford job was the last big job we got. That was before April 1st. There were no large jobs after that. We had five heaters in five houses \$75.00 each. Fryberger was figuring on some big jobs but his bids were too high. There was not a great deal of improvement after he came. But we were going good until creditors began to holler. We

(Testimony of Leo Francis.)

were in debt more after Fryberger came. The more we finished jobs the more money we had coming. I could not get the money without spending money to finish contracts. A lot of money was held back for the finish. I would lose [265] contract if I could not get credit to complete it. Without credit, contracts became liability instead of asset. We had no large new contracts after Fryberger went in; Fryberger did not neglect business, but he spent a lot of time at Bank. They had meetings that ran three days at a time, sometimes. That was part of his job. He was trying to adjust matters with Bank so that we could go on. The Bank had unsecured debt of \$6,100.00. I did not attend these meetings. I did not have more property in July than in June or April 1st. It ran about the same. The books were in such shape it was hard to determine our exact financial condition. I don't know the condition to-day. I don't know how much D. L. took out of the business of Gehres. I know what I was getting but have not added total up. I can't say exactly what I owed, about \$45,000. My assets were about the same. I turned all my papers over to my attorney after petition was filed. The statement I spoke of was the one Fretz took off books about June 1st. That's the date I was talking about. That statement was taken off books. I now know that my condition was practically the same in June as in August, except for material, I had to complete jobs. I know now that statements were incorrect. Conditions in April and

(Testimony of Leo Francis.)

August were about the same. I believed that with Fryberger we could pull the business out, but I had to get credit for that, and if my credit was closed down at that time I was gone. This is contract made with Fryberger. (Received and marked Petitioners' Exhibit 8 in Evidence.) [266]

B.-522.

PETITIONERS' EXHIBIT No. 8.

In Evidence.

AGREEMENT.

THIS AGREEMENT, made this 7th day of June, 1929, between Leo Francis, of Phoenix, Arizona, hereinafter called "Employer," of the one part, and Cliff B. Fryberger, of Phoenix, Arizona, hereinafter called the "Manager," of the other part.

WITNESSETH.

(1) The employer shall employ the manager for the term of fifteen months from date hereof as manager of the employer's business as a dealer in plumbing and plumbing contractor, now carried on at No. 316 North 6th Avenue, in the City of Phoenix, Arizona, subject to the determination as hereinafter provided.

(2) The manager shall well and faithfully serve the employer in such capacity as aforesaid, and shall at all times devote his whole time, attention and energies to the management, superintendence and improvement of the said business to the utmost of his ability and shall conduct said business for the

protection of the creditors of the Phoenix Plumbing & Heating Company, owned by employers and perform all such services, acts and things connected therewith as the employer shall from time to time direct with the consent of the creditor of the Phoenix Plumbing & Heating Company and as are of a kind properly belonging to the duties of a manager of such business.

(3) The manager shall not divulge any matters, relating to said business or to the employer or to any customer which may become known to the manager, to any competitors by reason of his employment, or otherwise, save insofar as may be necessary to the interest of said business.

(4) The manager shall keep or cause to be kept all such books of accounts or other books as shall be needed for that purpose, and shall enter or cause to be entered therein the usual accounts or particulars of all goods and things bought and received and sold or delivered upon credit, or otherwise, in the course of the said business, and shall at all times render to the employer and creditors accurate accounts and full [267] statements of and concerning said business. Said books shall at all times be open to the inspection of the employer and his agents in that behalf.

(5) All moneys received by the employer, except such sum as shall be required to be paid to "petty cash" shall be deposited to the account of the Phoenix Plumbing & Heating Company in a local bank at Phoenix, Arizona, if possible on the date of receipt, and every payment in excess of \$10.00 shall be made by check drawn on such account. The

350 *Standard Sanitary Manufacturing Company*

manager shall not draw, or accept, or make any bill of exchange or promissory note on behalf of the employer or otherwise pledge his credit except so far as he may have been thereto authorized by the employer.

(6) The employer shall pay to the manager a salary of \$250.00 per month, semi-monthly, in installments of \$125.00 each, on the 1st day of each month and the 15th day of each month; and at the expiration of the fifteen months, if the business of the Phoenix Plumbing and Heating Company is in a solvent condition, said manager to receive a third interest in addition to the above salary, for his services.

(7) The manager shall only have authority to sign all checks and receive moneys due the Phoenix Plumbing & Heating Company, and the manager shall furnish a surety bond to the employer in the amount of \$5,000.

IN WITNESS WHEREOF, the parties have hereunto set their hands, the day and year first hereinabove written.

LEO FRANCIS.

CLIFF B. FRYBERGER. [268]

State of Arizona,
County of Maricopa,—ss.

Before me, Caroline Helms, a notary public in and for said County and State, personally appeared Leo Francis and Cliff B. Fryberger, known to me to be the parties named in the within and foregoing instrument, and each for himself acknowledged

(Testimony of Leo Francis.)

to me that they executed the same for the purposes and considerations therein expresses.

CAROLINE HELMS,
Notary Public.

My commission expires: Sept. 18th, 1932.

The above agreement is approved by me this 7th day of June, 1929.

[269]

Mr. Nihel recommended Fryberger. He worked for us in 1928 for six months. We talked about Fryberger in May from time to time and before the explosion. The agreement (Petitioners' Exhibit No. 8 in Evidence) I don't know who was to approve it. No one else but Nihel spoke to me about Fryberger. Crane Co. and Momsen-Dunnegan-Ryan know about the employment of Fryberger. The Bank knew it when he came in, don't know if they knew it before. I didn't take it up with other creditors. Bank, Crane Co. and Standard Sanitary were biggest creditors. Crane Co. and Standard Sanitary had a number of assignments but the Bank is unsecured. I had to give bonds on most of my contracts. The ones assigned to Standard Sanitary and Crane Co. were bonded, but not all, however. I suppose the books will show what D. L. drew since September, 1927. I will look at books but am not much of a bookkeeper. Paul brought forward figures after explosion, so I understand. Paul said so. I don't know how. I

(Testimony of Leo Francis.)

don't know whether there is any record of what Lyon and I drew. I can't tell exact amount. During July I had conference at Adams Hotel with Fretz and others present. I did not tell Lane we were partners. I said to him that I told boys—Lyon and Dee, that if we did good I would share profits with them. I did not know Lane was trying to determine our credit. Sometimes I would sign bonds without reading them. I told Lane I signed without reading sometimes. I might be signing away everything. I started business with \$1800. Before that I was working as a steamfitter in Arkansas and Oklahoma, earning \$8.00 per day. I borrowed \$1,100 from my father when Dee came out in August, 1927. Father was then in Calhoun, Oklahoma. I did not [270] give him a note and have paid him back about \$700. It don't show on books of Phoenix Plumbing & Heating Co. that I owed him \$1,100.00 when I started business. It was in family so I did not show it in accounts payable on statements we made. Father loaned it to me, not all three boys. I only had \$800 of my own money. I paid \$3,600 for business, paid \$1,600 down payment. I turned \$1,800 over to Dee in cash. Sent it out by A. B. Midaugh, the latter part of September. My father got money from Lyon. It was indirect from Lyon through father because he would not push me so much. The full \$3,600 was paid, the last payment in June, 1929. Paid \$150 per month. Don't know if books show these payments. They were made by check. My brother and the bookkeeper had charge of books.

(Testimony of Leo Francis.)

Haven't seen the bookkeeper for two or three months. I paid money back to father. Don't know if he paid Lyon. Notes were taken for it. I sent him money right along; am still paying him. It is not the \$36.00 paid him each week by us boys. All the boys were paying that, \$12.00 per week of our salary. Dee ran business. If any more money was put in to start business I don't know where it came from. Father and Lyon were not here at first. Lyon started part time at \$15.00 per week and his house rent. I came in October, 1927, stayed until December, then went home. I came back in April, I think and have been here ever since. I did not draw wages out of Phoenix Plumbing and Heating Company while I was away. Father was in hardware and furniture business; he sold out about eight months ago. He did not put any money in business here. I paid father the last of \$700 two months ago. Paid it in cash out of my earnings. There is no record of it on the books. The last \$100.00 was paid in May or June. One time I had account in Citizens State Bank. It was closed early in 1928. Had it four or five months. I have statements and cancelled checks and will try and find them and bring them in. My wife kept the [271] money, she has no bank account. Lyon did not put any part of his wages in Phoenix Plumbing & Heating Co. He did not work anywhere else. He is older than me. I did not know Bonding company took Yuma job before petition was filed. I cannot fix date when it was turned over to the Bonding Company. The Stand-

(Testimony of Leo Francis.)

ard Sanitary sent lots of material down there latter part of July. Library job was taken over in August. We were not stopped by petition in bankruptcy. We were stopped on job by lack of material and money a few days before petition was filed. We worked until shop was closed with what material we had in shop. Our credit had been stopped by Standard Sanitary before that. I talked to Messrs. Nealon, Alexander, Laney and Duffy about voluntary petition before petition was filed. They are attorneys. I also talked with Fretz, Fryberger and Nihel a few days or a week or two before petition. I told them all the story I have here about how business was started.

(Examination by Mr. DUFFY.)

I was born in Oklahoma, my father in Syria. Syrians loan money without notes and such an obligation is binding, especially between relatives. The Murphy job was worth \$4,000. Fryberger was called away from shop on conferences with bank. They were after him for security on loans. Mr. Norris of bank said he would leave us alone, but would give no credit. They all agreed that with credit we could take care of everything. Up to early part of August if our work could be turned into cash, we could pay all our bills. The representative of the bank said so, and Standard Sanitary Co. and Crane Co. I talked about bankruptcy to attorneys because I heard that some of my creditors were planning this petition, not because I felt I was bankrupt. If all treated me as Nihel did we would make a go of it, and paid dollar for

(Testimony of Leo Francis.)

dollar. You advised me to [272] keep on plugging. After Fryberger came the bond companies investigated and found nothing to alarm them and we went ahead.

Dee gave Standard Sanitary an order on Lincoln Mortgage Company in 1928. I don't know what date. I knew about it, and agreed to it. I talked to Bowers about assignment and Lincoln Mortgage Company accepted it. Standard Sanitary gave us credit when they collected that \$13,000. It was their money after order was given. On June 5th the Lincoln Mortgage Company paid direct to Standard Sanitary. At time assignment was given we only had a little more work to do for Lincoln Mortgage Company. In March, 1929, our account with Standard Sanitary was practically \$45,000 and we had given them security to the extent of \$13,000 which was to be paid to them direct when the money was paid by the Lincoln Mortgage Co.

(Examination by Miss BIRDSALL.)

The Standard Sanitary gave us credit for the \$13,000. The order was \$14,196.07, but I don't think they received that amount. The Standard Sanitary received \$13,000 in June, and gave us credit. It was merely security until they got the money. I don't know that Lincoln Mortgage Company accepted assignment. I don't know if there was written acceptance. Standard Sanitary gave us credit after they got the money in June. I was not present when money was paid. I don't know the exact date or what books show.

(Testimony of Leo Francis.)

The statement of June 22, 1929 furnished the Bank was taken off books. Fryberger told Fretz how much it would take to finish each job, that's how they got that sheet. It does not show on statement of June 22 how much it would take to finish jobs. I don't know what you mean by net worth, ask Fretz about that. Mr. Fretz helped on all statements. It was statement of July 20th that showed what it would take to finish jobs. Nihel gave figures for material. Fryberger for labor. [273] The one I was talking about was earlier. It was the one that was brought to you. You'll have to talk to Fretz about statement. The statement I talked about balances. One I testified about showed what was needed to finish jobs. Fretz and Fryberger got together and got figures on gross material from Nihell, and Mr. Fryberger estimated labor. I don't know which one they got that for. There are so many statements and I don't know whether this (Respondent's Exhibit "A" for Identification) is the paper or not. Bank hollered more than other creditors. They had unsecured debt. Creditors were calling for papers every day.

Q. The notes were past due, weren't they?

A. Not over 60 days.

Q. Didn't you promise assignments to the bank?

A. No, ma'am.

Q. Didn't they ask you for them? A. Yes.

Q. Why didn't you give them an assignment; you gave them to Crane Co.

(Testimony of Leo Francis.)

A. They had practically played out; there were no more to be given, and these others were furnishing us material.

Q. And you were asking the bank for money for the pay-roll? A. Yes.

Q. Didn't you have to give notes for money to meet your pay-roll? A. Yes.

Q. These other people had bonds as well as materialmen's liens and yet you gave them assignments, and then kicked about the bank asking for an assignment.

A. I wasn't kicking about it; I didn't blame them.

I saw Mr. Duffy in August, before the shop closed, two weeks before petition was filed. Some of the creditors asked about a voluntary petition in bankruptcy and I asked about [274] it between 1st and 3d of August. I drew out of Phoenix Plumbing & Heating Company \$400.00 once besides salary. That was close to January, 1929 and was for my personal use.

(Examination by Mr. PHLEGAR.)

Phoenix Union High School District contract was signed by D. F. Lyon and myself to get a bond. Insurance men knew there was no partnership. Nothing was said between me and School District representatives about partnership, or bonding company. I told them we were not partners. It was so understood with first bond we signed. Dee signed Petitioners' Exhibits 1 and 3 in evidence. One signed, Leo and one D. Leo. I did

(Testimony of Leo Francis.)

not have anything to do with either. Dee was my manager, my agent. I never told Bank we were partners. I told them I owned business. From the first, I told Crane Co. I was owner. So, too Standard Sanitary. I never told Momsen-Dunnegan-Ryan or Pratt Gilbert that it was a partnership. I told Mr. Norris (of the Bank) that I owned business, but that I was going to divide profits with my brothers. D. L. and Lyon never contributed to business. I never asked them to. All property of Phoenix Plumbing & Heating Co. was turned over to Receiver. A truck in Godman's possession is in dispute. Dee's car was never property of Phoenix Plumbing & Heating Co. No one was consulted about contract with Fryberger. The only creditor who knew about it was Standard Sanitary.

(Examination by Miss BIRDSALL.)

Nihell knew I was hiring Fryberger. He recommended him. Mr. Rudd of Standard Insurance Agency can tell you why the bonding company wanted all three to sign the bond. I don't know if bonding company wanted bond signed in untruthful way. The bonds were signed that way, but we were not partners. That's all I know. [275]

(Examination by Mr. SCHUPP.)

I am not a lawyer, bookkeeper, or office manager. I employed manager, my brother, and Mr. Fryberger. I figured on jobs, did not prepare bids, or make entry in books, did not prepare contracts or agreements, The manager and bookkeeper did all

(Testimony of Leo Francis.)

that. All my testimony is based on information obtained from bookkeeper.

(Examination by Mr. PHLEGAR.)

I had full confidence in my manager and bookkeeper and did what they said. Gehres was an attorney and bookkeeper, too.

(Examination by Miss BIRDSALL.)

I knew I was signing articles of a partnership; did not know I was running into all this stuff. I won't say I knew it was articles of co-partnership, I wasn't familiar with that stuff. Gehres was an attorney and for One Hundred Fifty (\$150) Dollars per month was both lawyer and bookkeeper.

(Examination by Mr. DUFFY.)

Articles of co-partnership signed in office, before that a lien had been filed by Gehres with Dain's help. Then they discovered we were not co-partnership. They waited until time to file lien was almost over; it was done to make lien good. No thought of creditors, only desire to save Two Thousand (\$2,000) on lien for concern.

(Examination by Miss BIRDSALL.)

Mr. Gehres told me to do that; Dains was helping Gehres. I don't think it was in spring or summer that lien was filed, or that I went to Dains in December. The lien would expire in ninety days. Mr. Gehres went to Mr. Dains, so I understood. Gehres did not get information as to partnership from me. He was working there a few months before that time.

TESTIMONY OF LEE FRETZ, FOR PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

My name is Lee Fretz. I am a bookkeeper. I worked for Phoenix Plumbing and Heating Company from [276] June 5 to August 15, 1929, as bookkeeper. I had conference in July with Lane of Bank and Nihell to find solution of difficulties of Phoenix Plumbing & Heating Company. The company was in financial difficulties. The claims of creditors were in hands of attorneys at that time. We got letter from Miss Birdsall on behalf of Momen-Dunnegan-Ryan in June or July. I went to office with a statement dated June 22, 1929. Referring to Respondents' Exhibit "A" for Identification, that is a copy of the statement I gave you at that time, prepared June 22, 1929. I went to your office twice. I told you I would try to find a way to work out this payment of your claim along with others, some of which were old and would work out statement. Later I gave you statement dated June 22. Item of contracts receivable \$47,600.64 was taken from contracts receivable book. That book does not show condition of contracts so far as material and labor on each contract was concerned. Did not show amount of labor and material needed to finish contracts. The only part of above item that was an asset was the part completed. No books were kept that would show that or what the company had invested in contracts, or what it would take to finish contracts. The contracts receivable would not be an asset without showing what it

(Testimony of Lee Fretz.)

would take to complete job. Where contract is roughed in, 50% could be collected. Did not have to wait for completion on some contracts. The only way you could tell how much value of job was by estimating. Books showing material and labor used were not kept, but should have been. Liabilities payable, shown on this statement (\$46,451.74). The way I arrived at that figure I asked certain large companies the approximate amount of their bill. They were in the accounts payable book, but you could not take the accounts payable book and arrive at that figure, [277] because there were some estimates given me from material houses where I took their estimate. The books were no guide and I had to take what was there. The accounts payable were at least \$46,451.74 and they might have been more. Notes payable \$6,100 shown is correct. Net worth shown, \$5,718.79, would be assets less liabilities and the difference would be shown here. That isn't the proper way to make a statement but that is the way this was made.

I would not make up statement that way if I knew what it would cost to finish job. That amount which was required to finish job would be liability. I overlooked that when I made up statement. I thought contracts receivable were completed contracts. I gave same statement to Lane. Later when I got familiar with books I told him we would have to make new statement and did on July 20 give him a statement showing what actual assets were. It was drawn up at Commercial National Bank. This (Exhibit No. 13 for identification) is the one.

(Testimony of Lee Fretz.)

Mr. Lane and myself made it up. Fryberger estimated labor and he and Mr. Nihel estimated the material necessary to complete various jobs. This is Cash Book I kept in June and July called Receipts & Disbursements. (Pet. Exhibit No. 6 for identification; No. 7 in evidence.) We paid Crane Company \$500.00 about June 20th. It came from Hogan and Farmer on Marana School District job; \$270.00 went to Crane Co. on July 23d from Barkley job, balance \$170.07 to us. Mrs. Barkley paid them and gave us the balance. Contract was for \$370.00 and some extras. Payment to Crane Company did not go through Phoenix Plumbing & Heating Company. I tried to collect accounts receivable. As to what percentage of this \$3,700—it was really about \$3,800, I can't say I collected between June 1st and August 17th, I received two substantial payments. The rest of them would not run over [278] three or four hundred dollars. The Salt River Valley Water Users made payment of \$700, and another was made of \$100.00, and others were about from three to ten dollars, and of these there were only three or four hundred dollars collected. Those were the accounts as I found them on the books.

Dee Francis was in charge until June 5th, then Mr. Fryberger. Dee came in to visit after June 5th, never in any official capacity and I never saw any payment of money to him.

(Examination by Mr. DRAKE.)

\$500.00 on Hogan & Farmer job had been assigned to Crane Co. I was told to pay it that way.

(Testimony of Lee Fretz.)

I know that there was an assignment. I don't know if the Barkley job was assigned. Mrs. Barkley showed me receipt from Crane Co.

(Examination by Mr. DUFFY.)

The time I spent conferring with the bank and Fryberger might have interfered with my collections. There were quite a few unnecessary conferences.

I don't know that I could have collected anything on the accounts. If they were collectible, I could have spent more time on them. On the contracts receivable as to whether when job was roughed in Phoenix Plumbing & Heating Company was entitled to 50% of the contract, and other payments became due, when portions of the work had been installed, that is according to contract. Speaking of contracts in general, there are contracts where you can draw up to 25% of the total. Referring to statement of June 22, 1929 (Respondent's Exhibit "A" for Identification), at the time I submitted that statement to Bank, I also submitted to them statement showing all contracts receivable, amounts already received, and amounts to be paid.

On the statement of June 22, I showed [279] I don't know whether the statements of Crane Co. and Standard Sanitary show what material had been delivered or all that the contracts called for, but what I asked them for was a statement of their account. I didn't know what they were going to need in the future.

(Examination by Miss BIRDSALL.)

I asked them for a statement of amount due June

(Testimony of Lee Fretz.)

22, 1929, and statement given me by Standard Sanitary was very close to the amounts which I knew were already due. I never examined contracts listed in contracts receivable. I know of my own knowledge that 50% of contracts receivable is due when work is roughed in. Some of Phoenix Plumbing & Heating Co. contracts were written to be paid when job was completed. I was only stating generally when I spoke of payments on contracts. I don't know how Phoenix Plumbing & Heating Co. contracts read.

TESTIMONY OF H. FLIEDNER, FOR PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

I have been in business six years. I am familiar with plumbing fixtures and supplies and their prices. I made inventory of fixtures and supplies of Phoenix Plumbing & Heating Co. for Mr. Thalheimer the Receiver and put price on them. The total is \$2,177.20, our estimate.

(Examination by Mr. DUFFY.)

It is an estimate of plumbing material, does not include safe and office fixtures. Only stuff that could be used on jobs, price fixed on book value less depreciation.

(Examination by The MASTER.)

It is based on what a plumber would pay at a supply house less depreciation on some things, such as lavatories and other fixtures shop worn through use for display. Not much of that stuff there, not over \$200.00.

TESTIMONY OF DEE FRANCIS, FOR PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.) [280]

My name is Wolf Dee Francis,—no Leo in my name, no L in it. I signed checks D. L. Francis so that Leo could step into my place when he came out here to take the business. I bought the business for him. I put it D. L. so it would be Leo's initials and cover both names, as a joint name. Leo's name is not D. Leo. I came here about September 1st, 1927. I purchased business October 1, 1927. I came from Fort Smith, Arkansas. I was there five years, in plumbing business, under name Francis Plumbing Co. It was my own business. My wife took T. B. and I turned business to Crane Co. and came here. I did not fail in business. The only creditor I had was Crane Co. I finished job on University of Arkansas, then turned business to Crane Co., owed nothing on business except to Crane Co. I paid some personal bills since I came here. I don't know how much Crane Co. realized on business. I don't owe \$6,000 back there. I had one collection started on personal bill since I came. I can't say how much. There may be some bills for plumbing supplies, I don't know anything about. Leo gave me \$1,800 to start business with. I had \$40.00 of my own. Mr. Midaugh brought \$1,800 from Leo in cash about 3 weeks after I came here. I bought business October 1st two weeks after I got Leo's money, from Remsbottom for Leo on contract in the amount of \$3,600.00 payable so much down and so much a month. I paid \$1,600

(Testimony of Dee Francis.)

down and put Leo's \$200 and \$500 or \$600 from Thomas, a cousin of mine, in the bank. Thomas wired me \$400 in Tucson. I got the money from Thomas to put into the company. After we had decided to buy business I tried to get out with smaller payments but couldn't.

There was a written contract with Remsbottom for \$4,600 and I paid \$1,600 down and either \$150 or \$125 a month. In fact when I had spare money I paid it to him. I started bank [281] account with \$2,100 in my name and Midaugh's.

First Remsbottom wanted \$2,000 down and I started Sunshine Plumbing Co. I brought money and Remsbottom refused deal and I wired Thomas for money and he sent \$400 or \$450.00. Later I made deal with Remsbottom. I conducted Sunshine Co. myself about two weeks. I had no stock, only spent \$50.00 on it. I told Thomas I was buying shop for Leo. I did not give him note. Thomas money was a loan to be paid when I got money. He was not to have interest in business. It was carried on books Phoenix Plumbing and Heating Co. from start. I paid Thomas some but borrowed more, four or five times more. I can't give dates. I will have to refer to the books. I don't know what I could find on the books since I was fired. I don't think more than one or two of books were destroyed; think General Ledger was only book destroyed. This ought to be in some of the other books. Referring to amounts and the times I borrowed them from Thomas, one time I made a draft on him for \$500. Don't think I bor-

(Testimony of Dee Francis.)

rowed any, up to the first of the year 1929. I don't know how long after that I borrowed this \$500. I drew a draft. It should show on the records of the bank. As near as I can recall that was \$560 or \$660. I got one for \$300 and another for \$100, but when I don't know. They should be on the books. I can't give the dates. I don't know whether it was before Leo came back in April or not. There were several reasons for borrowing the money. Sometimes the business was prosperous but we got pushed and I borrowed from bank. Don't know whether I started borrowing from bank first month I had an account there. If Mr. Lane's records showed I did, it must be right. There were just three loans made from Mr. Thomas in 1928. I think they were all made in 1928. I think at one time I got \$300; at another time I got \$100; another time \$560 or \$660—that was the first [282] loan just prior to buying the business from Remsbottom. I told Leo about loans sometimes, sometimes I did not.

Thomas came to Phoenix in April or May, 1929. He did not work for Phoenix Plumbing & Heating Company, and was not connected with it. He is in Phoenix now, with Arizona Garment Company at 532 West Washington Street. The loans from Thomas were carried on books of company. I guess the Thomas loan was included in my first statement to bank on October 15, 1927, in this (indicating on statement) Two Thousand Six Hundred Seventy (\$2,670.00) Dollars. We paid Remsbottom Sixteen Hundred (\$1600.00) out of Thirty-

(Testimony of Dee Francis.)

six Hundred (\$3600.00). We were paying Remsbottom interest. I have contract with Remsbottom here; it ought to be in shop; it was not recorded; it was just a contract. I don't know date it was paid out, but my brother has bill of sale. I don't think Remsbottom had mortgage. I won't swear I did not owe Remsbottom Two Thousand Six Hundred Seventy (\$2,670.00) Dollars at the time I made this statement of October 15, 1927 or anything else that happened two years ago. I listed whole liability at Two Thousand Six Hundred Seventy (\$2,670.00) Dollars and don't know whether I called it Remsbottom or not. That is my writing—the signature, not the rest (on paper shown witness). (Petitioners' Exhibit No. 2 in Evidence.) This statement signed April 2, 1928 (Petitioners' Exhibit No. 3 in Evidence) bears my signature. I signed it Leo Francis. I told bank I was not Leo at that time. The chattel mortgage of Seventeen Hundred One (\$1701.00) Dollars may have been Remsbottom's. There may have been other notes included in Thirteen Hundred Fifty (\$1350.00) Dollars payable to Bank. I told Bank all about them. Thomas indebtedness was carried on "open accounts" Thirty-nine Hundred Seventy (\$3970.00) Dollars, same as merchandise. I did not mention Thomas' name to bank. I might have told Leo about owing Thomas money—I did not tell him every time I [283] borrowed; gave Thomas no note. I paid interest. If I borrowed One Hundred (\$100.00) Dollars I'd pay One Hundred Five (\$105.00) Dollars, ans so on. If I did not have it, I did not pay it.

(Testimony of Dee Francis.)

Thomas was paid up mostly last April, 1929, about time he came out here. Books will show how much; it should be in ledger. He was paid some after ledger was destroyed. It should also appear in other books. The books were carried as any other set of books. I drew Forty-five (\$45.00) Dollars per week practically all the time from September, 1927. I also paid doctor's bills and hospital; it was all charged to me. I don't know how much I drew. I was to get Thirty-two Hundred Fifty (\$3250.00) Dollars per year, Forty-five (\$45.00) Dollars per week and my house rent; also my expenses on road estimating and checking jobs. I signed checks, Leo did not. There was no limit to my checking account.

Q. Is there an account on the books showing your account with the Phoenix Plumbing & Heating Company since 1927? A. There should be.

Q. Do you know whether there is? Was there such an account when you left in June?

A. I cannot swear to that.

Q. Did you ever see your account? A. Yes.

Q. Such an account was kept? A. Yes.

Q. And everything was charged against your account? A. Yes.

Q. What balance is owing to you at this time from the Phoenix Plumbing & Heating Company, or did you settle that when you went out?

A. I went out with the understanding that the business was to go on; I did not tally up to find out how much I had coming. [284]

Q. Did you take any money when you left?

(Testimony of Dee Francis.)

A. No.

I took One Hundred Sixty (\$160.00) Dollars in cash when I left; I don't think it was charged on books—it was on books, but not against me. I gave it to my father; the company owed him Sixty (\$60.00) Dollars, so I got One Hundred Sixty (\$160.00) Dollars and gave it to him. It shows on books. It was cash borrowed; the books will show when it was put in. Father loaned Two Hundred (\$200.00) Dollars, the books will show that. I'll try to find them on books; it's all there. I never borrowed from father before. I got Eighteen Hundred (\$1800.00) Dollars from Leo and paid for business with it. No account carried showing money owing to father from Leo or anyone else prior to this \$200.00. The cash book should show that I drew Forty-five (\$45.00) Dollars per week during last six months. January 1, 1929, to June, 1929. My wife drew it. I had expense money besides that. All that I drew for anyone else is on books. I had sixty-seven men to look out for. I cannot testify to amounts, or that I drew any, it's all in the books; I had plenty to worry about.

I paid Thomas back some money; he was the Arizona Garment Company; I may have issued checks to both. I think there was an account with the Garment Company. After I left they might have burned books up. Payments to the Garment Company were made after explosion. I can't say whether money was paid to one or other. Thomas or company, you have the check stubs. I don't

(Testimony of Dee Francis.)

think there was any payment to others from January 1 to June 1, 1929, outside regular course of business. I paid only wages to Gehres. When I left shop I always signed blank checks and left them with him, and he countersigned them. If any big checks were drawn, I don't know about them. One time he deposited check for Twelve Hundred (\$1200.00) Dollars [285] and drew it out a few days after; 'twas in 1928 or 1929, don't know whether it was before or after explosion. I think before. I was out of town; he deposited check to cover shortage in Bank. When I got back I saw deposit and gave him Twelve Hundred (\$1200.00) Dollars back. His salary was One Hundred Twenty-five (\$125.00) Dollars first, then One Hundred Seventy-five (\$175.00) Dollars. I did not see his check for \$1,200.00; saw deposit slip. I did not look through check book to see what he drew; thought he was honest man. He and I signed checks, but I had my own personal check book, but he countersigned it. When I was out of town and needed money, I could make checks. I don't think any other amounts were drawn out save regular expenses. The Shayab check for Two Hundred Five (\$205.00) Dollars was money I borrowed from him some two or three weeks before the date of check. Shayab lives at Jefferson Hotel. He does not do anything; has money. The loan shows on books as an account. I think you'll find that check deposited in bank; you can trace deposit on slips two or three weeks before April 1, 1928. I bor-

(Testimony of Dee Francis.)

rowed more off him late 1928 or early 1929; don't know how much; all short loans. You'll find it in stubs or deposits. I would tell him how much I wanted, say Two Hundred (\$200.00) Dollars, he would write check and I would give check dated two or three weeks ahead—no note was given. The account was given to bookkeeper, he should have put it on books. I'd give him check, says this is to cover shortage, showed it to him as loan, and told him about check I had given. Don't know when I made last Shayab loan; don't think any after explosion; won't be positive, should be on books. Shayab is still in Phoenix. I think he leaves in summer, comes back in winter. He is at Jefferson when in town. That check for Ten Hundred Fifteen (\$1015.00) Dollars to Shayab dated May 10, 1929, after explosion, [286] was borrowed same as others. It should show in books. It doesn't show on statements to obtain credit, but bookkeeper was always notified of it.

(Shayab checks introduced in evidence, Petitioners' Exhibit No. 9.) [287]

(Testimony of Dee Francis.)

B.-522.

PETITIONERS' EXHIBIT No. 9.

In Evidence.

Cancelled Checks.

No. F.-106. The Commercial National Bank,
Phoenix, Ariz.

April 1, 1928.

Pay to the order of Walter Shayeb \$205.00—
Two Hundred no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

D. L. FRANCIS.

DLF.

Endorsed on back: WALTER SHAYEB.

No. F-75. The Commercial National Bank, Phoe-
nix, Ariz.

May 10, 1929.

Pay to the order of Walter Shayeb \$1015.00—
One Thousand and fifteen no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

D. L. FRANCIS.

PAUL E. GEHRES.

Endorsed on back:

WALTER SHAYEB.

HOWARD O. NORKMAN. [288]

Check for One Hundred Twenty-five (\$125.00)
Dollars dated May 2, 1929, to Joe Thomas must be
for payment on loan I owed Thomas or stock I
bought on contract. All my checks were on com-
pany, then at end of year I'd settle it. I did not

(Testimony of Dee Francis.)

settle up on Thomas account because I did not finish year; they put me out; I had no chance to make accounting and had no accounting as to what I owed firm. I don't know whether they *they* owed me or I owed them. I drew salary up to day I left. Check dated May 24, 1929, was for same thing, both for stock in Arizona Garment Company; shows on Thomas account in books, or should. Check dated May 16th for Two Hundred Fifty (\$250.00) Dollars was for same thing.

I bought Fourteen Hundred (\$1400.00) Dollars stock in Arizona Garment Company when the Garment Company was organized. I had ten or eleven thousand dollars of government insurance. I borrowed One Thousand (\$1,000.00) Dollars on that and deposited it to the credit of Phoenix Plumbing and Heating Company; came in three payments, one on my pension of Fifteen Hundred (\$1500.00) Dollars—I got Two Hundred (\$200.00) Dollars, one was for \$6,000.00 Dollars, one for \$4,000.00 Dollars, all together it made up One Thousand (\$1,000.00) Dollars that I got. I applied for it in March and it came in three different checks; went to credit of Plumbing Company, and I drew on it. I bought Fourteen Hundred (\$1400.00) Dollars worth of stock against the One Thousand (\$1,000.00) Dollars. I have no personal checking account. I had one when I first came here in Commercial National under name D. Francis. Had none in any other place. Check for One Hundred (\$100.00) Dollars, dated May 22, to Thomas Was for stock.

(Testimony of Dee Francis.)

Check dated April 12, to Thomas for One Thousand (\$1,000.00) Dollars was for stock, but not for myself, for another party, C. T. Calloway, with money [289] he gave me in January. They were selling some material at Westward Ho hotel, some fittings left over. I was keeping about One Thousand (\$1,000.00) Dollars for Calloway in safe. When this man wanted cash for the material, I used Calloway's money, with his consent. Then when the Garment Company was formed I bought One Thousand (\$1,000.00) Dollars worth of stock for Calloway. The invoice for plumbing materials purchased should show on books, under merchandise. I don't know foreman's name from whom I bought it; it should show on books. Calloway's money did not go through bank—I bought goods for cash. I don't remember name of contractor, but I'll get it at recess. I'll find it in books, too.

Check dated May 30 for Seven Hundred Twelve (\$712.00) Dollars was on loan from Thomas; these checks represent payment of loan and Fourteen Hundred (\$1400.00) Dollars I drew out, the rest as Calloway transaction.

(Checks received and marked Pet. Ex. No. 10 in Evidence.) [290]

B.-522.

PETITIONERS' EXHIBIT No. 10.

Cancelled Checks.

No. 838. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue, Phone 5065, Phoenix,
Ariz.

July 30, 1928.

The Commercial National Bank, Phoenix, Arizona.

Pay to the order of Joe Thomas \$712.00—Seven
Hundred Twelve Dollars.

Endorsed on back: JOE THOMAS.

MAUD THOMAS.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

No. 2383. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue, Telephone 5065, Phoenix,
Ariz.

4-12-1929.

The Commercial National Bank, Phoenix, Arizona.

Pay to the order of Joe Thomas \$1,000.00—One
Thousand no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

Endorsed on back: JOE HOWARD.

No. 2724. Phoenix Plumbing & Heating Co., 316
North Sixth Avenue, *phoe* 5065, Phoenix, Ariz.

5-22-1929.

The Commercial National Bank, Phoenix, Arizona.

Pay to the order of Joe Thomas \$100.00—One
Hundred no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

Endorsed on back: JOE THOMAS.

No. F-103—Phoenix, Arizona, 5-16-1929.

The Commercial National Bank, Phoenix, Ariz.

Pay to the order of Joe Thomas \$250.00—Two
Hundred Fifty no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

D. L. FRANCIS.

PAUL E. GEHRES.

[Endorsed on back]: Arizona Garment Mfg. Co.,
532 E. Washington, Phoenix, Arizona.

No. F-105—The Commercial National Bank
Phoenix, Ariz.

5-24-29.

Pay to the order of Joe Thomas \$50.00—Fifty
no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

D. L. FRANCIS.

PAUL E. GEHRES.

[Endorsed on back]: JOE THOMAS.

378 *Standard Sanitary Manufacturing Company*

(Testimony of Dee Francis.)

No. F-98—The Commercial National Bank,
Phoenix, Ariz.

5-2-1929.

Pay to the order of Joe Thomas \$125.00—One
Hundred Twenty-five no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

D. L. FRANCIS.

PAUL E. GEHRES.

[Endorsed on back]: JOE THOMAS. [291]

Check dated March 15, 1929, to Carom & Sons
for merchandise, Plumbing Company check signed
by me, was for material bought for Arizona Gar-
ment Company. I paid for some machines for Gar-
ment Company; don't know if it was charged
against me personally, it is in books; it should be; I
don't want to say anything about it until I can look
at books.

(Check introduced in evidence as Petitioners'
Exhibit 11.) [292]

B.-522.

PETITIONERS' EXHIBIT No. 11.

In Evidence.

Cancelled check.

No. F-74—The Commercial National Bank,
Phoenix, Ariz.

3/15/29.

Pay to the order of M. Karam & Sons Merc. Co.
\$1100.00—Eleven Hundred no/100 Dollars.

PHOENIX PLUMBING & HEATING CO.

D. L. FRANCIS.

PAUL E. GEHRES.

(Testimony of Dee Francis.)

[Endorsed on back]: Pay to the order of Sonora Bank & Trust Co., Nogales, Arizona. M. Karam & Sons Mercantile Co. For Deposit Only. [293]

The check for \$1100.00 was for machinery I bought in Nogales for Mr. Thomas. The plumbing company owed him either \$660.00 or \$760.00 and I gave the check and we made a settlement on it.

Q. Then on March 15th you gave a check of the Phoenix Plumbing & Heating Company for this machinery for the Arizona Garment Company to pay an indebtedness owing by the Phoenix Plumbing & Heating Company to Thomas?

A. Partially to Joe Thomas, yes. What we owed him.

Q. Will you point out on the books the Joe Thomas account, where you owe that amount and how this payment was charged to that account; will you refer to the book and find out when that starts,—it starts with what date? A. April 26th.

Q. Of what year? A. 1929.

Q. Where are the books showing the Joe Thomas account previous to that time?

A. That is what I want to know.

Q. You were in complete charge of the business; your brother testified and you testified that previous to April 26, 1929, you were manager; what became of the books?

A. When I left the shop they were there.

Q. Will you say definitely that there was a book showing the account of Joe Thomas when you left on June 1st? A. Yes.

(Testimony of Dee Francis.)

Q. Previous to the explosion? A. Yes.

Q. Are you sure?

A. I am not sure I am living.

Q. When did you last see the book carrying the loan account of Joe Thomas previous to April 26, 1929? [294]

A. I didn't see Mr. Thomas' account.

Q. What sort of a book was it?

A. I guess it was a ledger.

Q. I don't want you to guess; you should know what it was.

A. I didn't examine it.

Q. Did you ever examine the account of Thomas on that book?

A. I left that to the bookkeeper.

Q. You gave him the charges, didn't you?

A. Yes.

Q. When did you give them?

A. Whenever they were made.

Q. When were they made? A. I don't know.

Q. When did you make these loans from Thomas?

A. I cannot say definitely; I gave you the amounts of them.

Q. State the time approximately.

* * * * * * * * * * *

Referring to this account, state what amounts were due Thomas previous to April 22, 1929?

A. When we made a payment it was put in the book; the bookkeeper attended to that.

Q. Was it evidenced by any note? A. No.

(Testimony of Dee Francis.)

Q. Referring to this book, see if there is any record of this \$1100 credit to him.

(Witness examines book.)

A. I don't see any \$1100.

Q. Can you point out any book among the books of the Phoenix Plumbing & Heating Company which shows this \$1100 transaction?

A. I have looked for it and cannot find it.

Q. Then you cannot point out any book on which it shows? [295] A. I could not find it.

Q. This \$1100 payment was not all due to Mr. Thomas at that time? A. Yes.

Q. What amount was due Mr. Thomas?

A. Either \$660 or \$760, I think; we owed him an account and to the best of my recollection it ran around \$660 or \$760; that is as close as I can remember without the books.

A draft was drawn on Thomas, I called it the check, in 1928, the latter part, on Commercial National Bank, by Gehres, at my direction, to cover deficit in pay-roll, then there was an additional amount owing him. We had made some previous payments, the books should show (reading) April 26, \$24.96 payment, \$180.00. I don't know when that was made to Thomas; don't know if I ordered it—I left signed checks there and bills were paid in my absence. If I were there bookkeeper consulted me about such payments. Thomas was in city when these payments were made; came in April, 1929. He came here in March and then left and came back here. We had been corresponding

(Testimony of Leo Francis.)

and planning about Garment Company for three or four months before that, Thomas and me. He wanted to start factory here. I told him I might buy stock. I was not to have an interest. I don't think Garment Company was started until April. He was here when I paid \$180.00. I don't know whether \$180.00 was on loans or something bought for Garment Company, or whether it was cash or check.

(Reading from Exhibit 1 for Identification, Exhibit 7 in evidence.)

Payments to Thomas, May 4, \$98.52; May 8, \$170.00; May 10, \$50.00; May 11, \$113.46; May 22, \$125.00; May 22, \$250.00; May 22, \$100.00; May 27, \$50.00. The opposite side of [296] account with Thomas, in Gehrs' handwriting, is (reading) April 22, forward, paid U. S. Govt. 4-12-29, Insurance loan 241, cash \$5.00, April 23, April 27, U. S. Gov. Ins. \$275.00, May 15, U. S. Gov. Ins. loan \$526.82, May 22 Ins. \$40.00. Account headed "Loan Account D. Francis to Joe Thomas."

These entries from April 22 show the money I borrowed on my insurance to buy stock in Garment Company, totals \$1,087.82, total of all amounts \$1,136.98 paid to Joe Thomas. The account I just read must be my personal account with Joe Thomas. It does not refer to other loans to company.

I don't know what book shows. I know I borrowed money, but did not know it was in books, the bookkeeper put it in. I never saw it before. That isn't borrowed money from Joe Thomas (re-

(Testimony of Dee Francis.)

ferring to account read) it is carried as loan account of Joe Thomas, but I can't understand "From Dee Francis to Joe Thomas, through company." I was manager, but was not loaning my insurance money to Plumbing Company. I did not know that he was depositing that money to Plumbing Company until after it was done.

This account has nothing to do with money borrowed from Joe Thomas for the Plumbing Company. The payment of \$712.00, shown in Petitioners' Exhibit No. 10, had nothing to do with the transaction of the checks, I think, but really don't know. The payment of \$1100.00 on March 15 should have been credited on this account (Thomas account) (Petitioners' Exhibit No. 10 in evidence) on books. The money Joe Thomas got from company was in payment of money he loaned company. He did not borrow from company. He may have got ahead; my instructions were to give him money when he asked for it. This money was to go into the Arizona Garment Company and if we owed him more or less, it was to be straightened out. Some of the books that were in the shop are not here; what kind they were, I don't know—there [297] were ledger and cash books; books that were called for when auditor had them. I don't know what dates they cover; they were all there just before I left in June. There was an auditor down there then and I went down and put myself at his disposal. Fryberger and Fretz were there. Books were in Fryberger's hands when I left. The books were in

(Testimony of Dee Francis.)

company's hands in June when I was discharged. I also went to office of auditor in Luhrs Building. That was afterwards, I don't know if it was in August, but when I went there a man was working on books and he asked me something about it. But, anyway, they were all there, my pseronal file and everything, when I stepped out. Some of those books are not here. I testified I believed the ledger was blown up. There was another book, a cash book in which Joe Thomas' accounts were kept, if I am not mistaken; it could be got from that. I said the cash book was there in June. The ledger was blown up. It was the only one of value blown up. I did not examine books day after explosion; I saw they were there. The police asked me to keep everyone out until they made examination. I got there first about 7:30 A. M. I was there between nine and nine-thirty night of explosion. I was there Saturday afternoon; we closed about 5:00 P. M. I am not sure I was there till office closed that Saturday afternoon. I usually did stay. Mr. Gehres' job was to lock books in safe. I don't remember whether he left first or not. He told me next day he took some books home with him. I asked him what damage had been done books and he told me only one book of any importance had been destroyed. He said he would do his best to straighten them up. I saw the cash book afternoon after explosion in the shop. It was a black or blue book similar to that one (indicating cash book) (Petitioners' Exhibit No. 6 for identifi-

(Testimony of Dee Francis.)

cation; No. 7 in evidence). It was cash book, took [298] up where these (indicating cash book) left off.

Cash book (Petitioners' Exhibit No. 6 for Identification; No. 7 in evidence) left off in May, 1928. Pet. Ex. No. 6 for Identification; No. 7 in evidence is cash book in use when I left, if it had June entries. The first entry in Exhibit No. 7, No. 6 for Identification is (reading), "April 22, day after explosion—cash on hand, cash in bank." They must have started new set of books after explosion. Though I was manager I left things like that to the bookkeeper.

MASTER.—You were asked if you gave order.

D. FRANCIS.—I don't know that I did; I know cash book was not blown up.

Q. Where is it?

A. That's what I want to know.

Q. Do you know where it is? A. No.

Q. Where did you see it last?

A. In office of Phoenix Plumbing and Heating Company.

Q. What date?

A. I don't know what date; I was discharged then, and I saw it and knew it was there, but I left then.

Q. What was purpose of starting a cash book with entry on each set "day after explosion" if that was not destroyed? [299]

Auditor had all books there and I had impression old book was there. I know all books were there when I left shop. I don't know if entries

(Testimony of Dee Francis.)

were being carried in old book; he may have started new book and laid other one side. Missing cash book contained entries from date of old one until I left. Two sets of cash books were not kept. They may have changed all books after I left. I don't know what happened after I left. I was under impression old one was being used. I saw it between April 21st and June.

The MASTER.—Q. Let me ask a question or two. Soon after the explosion, did you have any conference with the bookkeeper with reference to the books? A. Yes.

Q. In that conference with him, with reference to the books, did you say anything about what books were and were not destroyed? A. Yes, sir.

Q. Did you give any orders or directions, or did he ask for any information with reference to opening up another book to take the place of the one destroyed?

A. I asked him what books were destroyed, and he said the general ledger, the big book that wouldn't go into the safe. I said, "How are we going to proceed?" He said, "I think I can fix it all right, working at nights." I said, "Go ahead and get what you need and fix them up and when you need me, I will help you."

Q. Did he ever call you? A. No.

Q. You never examined the books he changed or commenced?

A. I may have looked them over, but I didn't go into a thorough examination. [300]

(Testimony of Dee Francis.)

Q. Was anything said between you about any book except the general ledger?

A. That was the only one he said was destroyed; that was the only one that was mentioned.

Q. And you neither of you mentioned the cash book? A. No, sir.

(Examination by Miss BIRDSALL.)

Handwriting in cash book (No. 7 in evidence, No. 6 for identification) is Paul Gehres' from April 22 up to June 5th. There is a notation under June 5th (reading), "Taken over by Fryberger at this date." All of \$1100.00 to Carom was carried against Joe Thomas when we made settlement with him; it showed what we turned over to him. I can't say what was exact date of settlement with Joe Thomas; we talked it over from time to time; settled before I left. I don't know how. The way it was settled and carried should show on books, though I can't find it. I put in money and bought stock myself and he drew on that. I don't see any record in these books of loans he made to Plumbing Company. I don't know how my personal account was straightened out. I told bookkeeper about all these deals; gave him the stubs and told him to take care of it, just as I did any other check I made out while out of town. I told him \$1100.00 Carom check was for machinery and to charge all of it to Joe Thomas. I don't know whether I told him to pay other amounts to Joe Thomas. I don't think I did; he knew accounts, he was bookkeeper.

(Testimony of Dee Francis.)

He should know all about it. (To Master.) I told bookkeeper all about it each time I issued checks.

I guess check for \$1,000.00 on April 12 was charged to Thomas, making total of \$2,100.00 he got in March and April. I don't know whether we owed him that much at that time. The Galloway money went direct to Garment Company. I [301] paid the account of Phoenix Plumbing Company for fixtures bought with money. It had nothing to do with money I borrowed from Thomas. \$1100.00 Carmon check (Pet. Ex. No. 11 in evidence) had nothing to do with Calloway transaction. I bought stock for Calloway to repay \$1,000.00 used to buy material. Garment Company and Joe Thomas are one and the same. I would have to consult books of Garment Company to find out all I paid for stock for self, Galloway and others. I bought \$1,400.00 for myself; don't have it now, about what I had in July. When stock was issued, even if it had not been issued, I had equity of \$1,000.00 for Calloway—might have been more. \$1,000.00 I got from Calloway should show on books; got it in January or February, 1929. I did not know then when Garment Company was to be formed; that's when I got money from Calloway. I got money from Calloway to buy material I spoke of. No other transactions through Garment Company that I know of. I bought no stock for father or Lyon. I don't know if sister has any stock. I don't think Thomas loans amounted to more than \$700.00 or \$800.00 on January 1, 1929. I don't re-

(Testimony of Dee Francis.)

member if I borrowed more after April 20; I made none later.

Check dated May 4, 1929, to Garment Company for \$98.52 was part of payment to Joe Thomas, signed by me and countersigned by Paul Gehres. The money I got from Government went to Thomas for stock. I don't know if all payments were on loan or for stock; if we owed him so much money and gave him money, it would be deducted. I said this account was money borrowed from Government, \$1,087.82, and all used for stock in Garment Company. Credits on opposite page (Pet. Ex. No. 1 for Identification, No. 7 in evidence) are for anything we owed Thomas. I said this morning that this borrowed money was put to credit of Plumbing Company; it was all drawn out to buy stock in Garment Company for me. I don't know if the check for \$98.52 went for stock, I guess so. The same for \$180, \$170, \$50, \$113.46, checks all for stock in [302] Garment Company. I don't know if that includes all payments on books. There are payments on books not covered by these checks.

(Check to Garment Company, Petitioners' Exhibit 12 in Evidence.) [303]

B.-522.

PETITIONERS' EXHIBIT No. 12.

In Evidence.

Cancelled checks.

No. 2645—Phoenix Plumbing & Heating Co. 316
North Sixth Avenue. Phone 5065. Phoenix,
Ariz.

May 11, 1929.

Pay to the order of Arizona Garment Mfg. Co.
\$113.46***113***46***DOLLARS.

PHOENIX PLUMBING AND HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

THE COMMERCIAL NATIONAL BANK.

Phoenix, Arizona.

Endorsed on back: ARIZONA GARMENT MFG.
CO. 532 W. Washington, Phoenix, Arizona.

No. 2611—Phoenix Plumbing & Heating Co., 316
North Sixth Avenue, Phone 5065, Phoenix,
Ariz.

May 10, 1929.

Pay to the order of Arizona Garment Mfg. Co.
\$50.00***50 Dol's***00cts***DOLLARS.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

THE COMMERCIAL NATIONAL BANK,

Phoenix, Arizona.

Endorsed on back: ARIZONA GARMENT
MFG. CO.

No. 2602—Phoenix Plumbing & Heating Co., 316
North Sixth Avenue. Phone 5065. Phoenix,
Ariz.

May 8, 1929.

Pay to the order of Arizona Garment Mfg. Co.
\$170.00***170 Dol's***00cts***DOLLARS.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

THE COMMERCIAL NATIONAL BANK,
Phoenix, Arizona.

Endorsed on back: ARIZONA GARMENT
MFG. CO. [304]

No. 2496—Phoenix Plumbing & Heating Co., 316
North Sixth Avenue. Phoen 5065. Phoenix,
Arizona.

4-27-1929.

Pay to the order of Arizona Garment Mfg. Co.
\$180.00***180 Dol's 00cts***DOLLARS.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

THE COMMERCIAL NATIONAL BANK,
Phoenix, Arizona.

Endorsed on back: ARIZONA GARMENT
MFG. CO. JOE THOMAS.

(Testimony of Dee Francis.)

No. 2583—Phoenix Plumbing & Heating Co., 316
North Sixth Avenue. Phoen 5065. Phoenix,
Ariz.

May 4, 1929.

Pay to the order of Arizona Garment Mfg. Co.
\$98.52***98 DOL'S 52 CTS***DOLLARS.

PHOENIX PLUMBING & HEATING CO.

By D. L. FRANCIS.

PAUL E. GEHRES.

THE COMMERCIAL NATIONAL BANK,

Phoenix, Arizona.

Endorsed on back: ARIZONA GARMENT
MFG. CO., Phoenix, Arizona. [305]

\$1,087.82 is amount I received from loan. Entry of April 30 in cash book (7 in Evidence; 6 for Identification) Joe Francis \$1,087.82 is check my father gave us as loan; it came back; it was on First National of Ft. Smith, Arkansas. I don't know why it was turned down. When it came back, it was charged properly on books. Money was from Father; check signed by Marie Francis. It was Mother's money. It was not made good.

(Examination by Mr. DUFFY.)

When I started the concern Mrs. Remsbottom was bookkeeper. She stayed three or four months, then I had two other girls later. Gehres started in May or June, 1928, he was recommended by President of Commercial National Bank. I told president my books were in bad shape; he recommended

(Testimony of Dee Francis.)

an auditor, Garrett, who put them in shape and then sent down Gehres. I turned books over to Gehres and four or five months later made arrangements for him to sign checks. He made financial statements as I called for them. I only called for about two, one before and one after I gave him authority to sign checks. I was sick half the time and he would have to come to my house for me to sign checks. He proposed his signing checks. He suggested idea that I sign blank checks. I would sign as high as 60, 70 or 80 just before pay day. The average of blank checks signed by me was about 300 per month from January, 1929. I never made a thorough examination of the accounts. The time on each job was turned in to Gehres by gang leader and Gehres made out checks. I appointed job foreman, had six or seven during 1929, all the time. Some of these were recommended by Gehres. In the spring my attention was called to the fact that the money I was taking in did not check with my expenditures and [306] I began checking upon him, but I found nothing wrong. I just looked at checks to see who was getting money, did not check with bank statements and cancelled checks. I did not check to see if name on check was same as person who got the money. Gehres was still there when I left. Leo and Nihell both spoke to me about checking Gehres. The check for \$1,200 loaned us by Gehres was on the Phoenix National Bank. I saw it on duplicate deposit slip and on bank book. Gehres told me he was a lawyer. I was glad to have

(Testimony of Dee Francis.)

a combination of bookkeeper and lawyer. I understood he was a veteran. I did not know if he had practiced here, he agreed to work for \$125 per month. I consulted him and followed his advice. I never made a thorough check of his accounts. The invoices for material were checked with goods by anyone there. Fryberger, who worked for us in 1928, checked the payment and invoices and material. After he got hurt, Gehres did it. The cancelled pay-roll checks were never checked to see who got money. Gehres paid men each pay day. Sometimes there would be checks left over and I would try to find out where men were. Gehres would take care of checks, that is why I was advised by some of my creditors to get rid of him. The pay-rolls were too big. I started to use him as my lawyer after petition was filed. I saw him only a few times after I quit the Plumbing Company. He recommended Mr. Phlegar. I never saw any of his checks.

(Examination by Miss BIRDSALL.)

Gehres did not tell me where he was going. His wife told me he had gone to California. Nihell of Standard Sanitary told me to get rid of him. He told me I had better check up on him. Gehres kept the time book. My sister was telephone operator. She did not check pay-roll or books.

Calloway was working for us, got \$55.00 per week, he asked me to keep \$1,000 for him. He had money there all the [307] time in an envelope with his name on it. He had \$200.00 or \$400.00 in the safe

(Testimony of Dee Francis.)

when I left. Ouly Gehres, Leo and myself had access to safe. Calloway told me he wanted to take stock in Garment Company in March. The company operated some time before it was incorporated. Thomas started at 532 W. Washington St., he may have got his mail at Plumbing Company. He started business by himself and later got another man in with him. Calloway said he wanted to buy stock, did not say how much. I had used his money to buy material from Westward Ho job. Calloway told me I could use his money because contractor wanted cash. I think the contractor's name was Joy.

Q. You will see on this ledger, which is Petitioners' Exhibit No. 1 for Identification, No. 7 in Evidence, various loan accounts. Do you find any loan account there which shows any loan made by Calloway?

A. When a loan is closed it is taken out of the ledger; only the live ones are kept in there.

The separate folder of such closed accounts was kept in office. It was not destroyed. Calloway account should show on loan account or notes receivable. I saw some of the folders after April 22d. I can't say it was this one. Gehres made up statements. I don't know whether it showed in them. The ones I signed I did not check. I signed a number of statements to Commercial National Bank. I took bookkeeper's word for them. I trusted him fully. Trial balances were given every thirty days, sometimes 60 days. I could tell if company was

(Testimony of Dee Francis.)

solvent from trial balances. I had general idea of business at all times. I knew how much we owed creditors, the large ones, not all the small ones. I knew about those loans I made myself. I had accounting with Plumbing Co. at first of 1929. I drew \$3,250 a year and expenses. I don't know just how much I had coming January 1st, 1929. I don't know whether it was \$100 or [308] \$500 or \$1,000. My account does not show what was owing prior to April 22, 1929, only what I drew out after that. It shows payments down to June 4th. Everything was charged against me. Expenses on trip, house rent, everything.

Q. Do you see any of your salary payments over a period of six weeks here? (Indicating.)

A. There is a \$45, and there, and there; there are three \$45's there; whatever I drew was placed on that book.

Q. Where does it show the amounts you paid to the Arizona Garment Company for stock, on this page? A. This was what I drew. (Indicating.)

Q. You said everything was charged against you, and that it should show.

A. I think they had separate accounts.

Q. It was made a charge against you,—if stock was being bought through money of the Phoenix Plumbing & Heating Company, bought for you personally, it would be charged against your personal account? A. It should be.

Q. If it isn't charged against you on this account, which starts April 26th—

(Testimony of Dee Francis.)

A. I don't know whether the money I turned over to the factory on the insurance was charged to me personally or not.

Q. You testified that these were payments to Joe Thomas partly on account of loan?

A. How did I testify on that?

Q. The amounts of stock are not charged against your personal account, as it appears here.

A. I would have to look through those items to see.

Q. Did you find out this noon, or have you found out, exactly how much stock you have in the Arizona Garment Company?

A. Yes, I know how much stock I have. [309]

Q. I understood you to say that you didn't know exactly how much you owned—just what amount of stock you owned in the Arizona Garment Company at the present time; have you found out absolutely what you have?

A. I have \$1400 worth of stock.

Q. Have you those stock certificates with you here? A. No.

Q. Will you bring them into court? A. I can.

The MASTER.—I take it that this is on the witness' own statement; he said the books of the company would show.

A. I can ask how much Mr. Calloway has put in.

Q. It is just to verify his statement from the books. At the time you left the Phoenix Plumbing & Heating Company on June 1st, approximately of 1929 there were a number of unfinished contracts of the company going on? A. Yes.

(Testimony of Dee Francis.)

Q. Can you state generally what those contracts were?

A. You mean, name over the contracts under construction at that time?

Q. Yes; there was a contract on the Asylum job of June, 1929?

A. I believe that had been completed.

Q. Are you sure?

A. No, I am not positive, but I think so.

Q. About when was that completed?

A. It was shortly before.

Q. Was it completed on April 30th—the explosion was on April 21st, wasn't it?

A. I don't know.

Q. Was this contract on the asylum job completed on April 30th, which was a few days after the explosion?

A. I don't think it had been in April; I think it was only completed a few days before I left the shop.

Q. Had the money been received on it before you left the shop? A. The biggest part of it was.

Q. Had the job been accepted?

A. I believe so. [310]

Q. Are you sure? A. No.

Q. What was the condition on the city hall job when you left on the 1st of June?

A. It was practically completed but not yet accepted.

Q. Has it been accepted? A. I don't know.

Q. How long had that job been completed?

(Testimony of Dee Francis.)

A. It wasn't completed.

Q. It was practically completed?

A. Yes, ma'am.

Q. What was the condition of that job in April?

A. Just how do you mean?

Q. What was its condition so far as its being near completion?

A. I think they were setting the fixtures in May and June.

Q. In May or June? A. I believe so.

Q. Then it wasn't nearly completed on May 1st?

A. Well, when you get to setting fixtures,—the fixtures were all there.

Q. On what date?

A. When I left the shop the city hall job was practically completed; there was one cracked lavatory to be replaced and they were stopping leaks, etc.

Q. But it had not yet been accepted? A. No.

Q. How about the E. J. Bennitt job, was that completed on June 1st?

A. Yes, it was completed quite a while back.

Q. Was it completed in April?

A. Yes, ma'am.

Q. On the 30th of April? [311]

A. It was before then, I believe.

Q. Are you sure?

A. No, but I think it was completed probably ninety days before I left the shop.

Q. Had the money been received on it?

(Testimony of Dee Francis.)

A. Part payment; there was some payment in dispute.

Q. The job had been accepted?

A. Yes, they were using it but at first they claimed they didn't have the money, then they claimed the charges were too much, anything to keep from paying it.

Q. Don't you know whether it is completely paid for now? A. No.

Q. How about the Schwentker job; was that completed?

A. I don't believe so; I think it was roughed in and the tubs were set.

Q. When did you commence work on this job?

A. I don't know.

Q. How long approximately before you left?

A. Those adobe houses sometimes take a year to build and sometimes three or four months; we did so many of them I could not give you dates on any one job.

Q. You remember the Schwentker job?

A. Yes.

Q. You bid on it then? A. Yes.

Q. Was it anywhere near completed in April?

A. I think it was roughed in.

Q. You are not sure it was roughed in?

A. I believe it was,—that means completed until it is time to set the fixtures.

Q. That job was not completed when you left?

A. No. [312]

Q. How about the Central Heating plant job at the

high school; what was the condition of that on June 1st?

A. That was completed but not accepted on June 1st.

Q. All materials for it were on the job then?

A. Yes.

Q. What was the condition of that in April? The last of April?

A. I think all of the lines had been installed,—everything except the work around the boilers.

Q. But not completed?

A. No, it was completed in June.

Q. Had it been accepted on June 1st? A. No.

Q. Do you know whether it is accepted now?

A. No, we had some argument about the expansion joints, they accepted it and then decided they did not want that particular kind of expansion joint and wanted rods put through them, and then it didn't meet with the approval of the school board, and eventually they had to take them out and replace them.

Q. That was after you left? A. Yes.

Q. Then there has been work done there since that you know nothing about?

A. The replacement of those joints, if they have been replaced; I am not positive about that; they said they would have to take them out and replace them before it would be accepted; whether they did that or not I don't know.

Q. The Junior College job,—was that completed when you left? A. No.

Q. It wasn't completed in April then. When was it started?

(Testimony of Dee Francis.)

A. I don't know; the contract should show that.

Q. The contract was made September 5, 1928.
[313]

A. Well, then work probably started twenty or thirty days after that.

Q. Do you recall the condition of that job the latter part of April?

A. I believe it was all roughed in and the urinals set; they had to be set before the plastering was put in.

Q. Were all the materials in then?

A. I believe the material was probably on the job.

Q. On April 30th or June 1st?

A. I believe in April there was quite a lot of the material on the job; the built-in features there had to be installed before the plaster was put on; the wholesale houses kicked on delivering one piece one day and one the next, and sometimes they took and stored things.

Q. But you do know the job was not completed when you left?

A. They were putting in the showers, I believe; it may have been all finished but the showers.

Q. When did you last go over the job?

A. Probably 2 weeks before I left the shop.

Q. Maybe the middle of May?

A. Probably about the 25th of May.

Q. Do you know whether it is completed yet?

A. It is completed now because I did a little work on the heating plant for Mr. Elliott in the last few days.

(Testimony of Dee Francis.)

Q. That work is being done by the bonding company? A. I don't know.

Q. Who is Mr. Elliott?

A. A heating man from El Paso; he put in the heating plant.

Q. The bid of the Phoenix Plumbing & Heating Company was on the heating, or just on the plumbing?

A. On the plumbing—that is what we got; we put in a bid on the heating and plumbing. [314]

Q. How about the library and classroom job; was that completed when you left? A. No.

Q. Is it completed now? A. I don't know.

Q. What was its condition the latter part of April?

A. I think the latter part of April that job was probably roughed in and some of the fixtures set—those that had to be set before the plastering was put in.

The Harry Tritle job was not completed June 1st. It was roughed in in April. I don't know how much money had been paid. On big jobs we get payment every month, on small jobs we wait until it is roughed in, then we drew half, balance when completed. On big jobs we would draw up to 75% before completion. We drew up to 75% of what was completed each month on all material and labor. The Yuma High School job was roughed in June 1st. In April, soil-pipe was completed and water-pipe run. The roughing material was there, fixtures were to come. The largest part is roughing in material and the labor. No job was stopped

(Testimony of Dee Francis.)

when I left the plumbing company. The Lincoln Mortgage job was completed before April 30th.

I started Sunshine Company, then bought Phoenix Plumbing & Heating Company for Leo before he came down. The money I got from Leo was to buy the Remsbottom shop, that was what I asked for it for. We talked to Mr. Remsbottom and then we opened up this Sunshine; of course I was using Leo's money but did not invest more than \$50.00 until Leo came down to find out if he wanted to. I concluded the Remsbottom deal before Leo came out here. The price to Remsbottom was \$3,600 for shop and then I believe I gave him bonus. I don't remember exact amount. It might be \$4,270.00. My first statement to [315] Bank showed balance of \$2,670, with \$1,600 paid down. All payments were completed before I left Plumbing Company. We paid rent to Mr. Williams. That is Sunshine Company statement I started (Referring to Petitioners' Exhibit No. 13 in Evidence) "That was started with \$2,150.00. So far as the Bank was concerned," the statement was run into Phoenix Plumbing Company without any change of books later.

(Sunshine Bank statement introduced in evidence, Pet. Ex. No. 13.)

(Phoenix Plumbing & Heating Bank book introduced in evidence, No. 14 Pet. Ex.) [316]

B-522.

PETITIONERS' EXHIBIT No. 13.

In Evidence.

Sheet No. _____

_____ Name: Sunshine Plumbing.

_____ Address: _____

Old Balance	Date	Checks in Detail	Date Deposits	Date	New Balance
2,150.00	Sep 29	9.92-	Sep 26 2150.00	Sep 26	2,150.00*
2,140.08	Oct 3	13.50-	20.06-	Sep 29	2,140.08*
2,106.52	Oct 3	100.00-		Oct 3	2,106.52*
2,006.52	Oct 5	1,500.00-		Oct 3	2,006.52*
506.52	Oct 7	17.93-	10.00-	Oct 5	506.52*
478.59	Oct 8	47.30-		Oct 7	478.59*
431.29	Oct 10	4.20-	10.00-	Oct 8	431.29*
417.09	Oct 11	15.00-	10.00- 35.00-	Oct 10	417.09*

(Testimony of Dee Francis.)

be not paid annually, to become as principal, and bear the same rate of interest. This note is negotiable and payable without defalcation or discount and without any relief or benefit whatever from stay, valuation, appraisement, or homestead exemption laws.

PHOENIX PLBG. & HTG. CO.

D. FRANCIS.

Paid 2/18/29. J. R. F.

No. ——. Due ——.

Back of Exhibit:

J. R. Fleming. [318]

I sold truck to Godman in February, transaction should show on cash books. I forget the amount of purchase price. It happened in February. I gave Godman bill of sale. Godman and his partner. I think I told Leo about it. The biggest part of purchase price was paid at start. Remainder so much per week. Payments were taken out of his pay. Godman joined union and we had to raise him to \$55.00 per week. I don't know for sure just how the deal was handled. Gehres was told about it at the time, it should be in books. I didn't make note on books. The total amount was approximately \$275.00. I think they paid all but about \$75 or \$80. It was a regular truck contract. I believe I told Leo about it. I have no other property save a Dodge Sedan, 1928 model, bought new, which I have had for about 1½ years. I live in a furnished house, my wife is at Fresno with her sister. I am living off Lyon on Drumond Street, he is married, but his wife is away on a visit. I had transactions

(Testimony of Dee Francis.)

with Commercial National Bank, on loans, not Leo. I had no conversation with representatives of the bank regarding assignments on any of jobs, we were working on. I don't remember being asked for security. They did not ask me to assign contract. I don't think I had any conversation with Mr. McNichol about assigning City Hall job. I met Mr. McNichol on the street and asked for a loan of \$1,000. He told me I should have to make an assignment to the Bank, but the president gave me the money without one. I did not tell McNichols that there was no assignment on the City Hall job. I said we had money coming in, but don't think I specified City Hall job. I did not tell Mr. Norris, Mr. McNichol or anyone in Bank that the three brothers owned the business. I said Leo did. I don't know what the present condition of my account with the Plumbing Company is, whether [319] they owe me or I owe them. It is the same as it was when I left. There was two weeks I did not get any pay and another my check was held up. I drew \$160 when I left and gave it to father for money he loaned me.

The bonded jobs were City Hall, Schwentker, I think, not sure, Central Heating Plant, Junion College, Library job, Yuma High School, I don't think the Asylum job was bonded, that was done by general contract. The Bennett job was not bonded. The Tritle job, they wanted a bond but I insisted she pay for it, so it was dropped. I don't think bond was made, I'm not sure.

(Testimony of Dee Francis.)

The Bachowetz job was not bonded. It was roughed in when I left in June. No work had been done on it for a long time. The contract was for \$3,700 and the lien for \$2,600, because that was the amount of work done at time we finished. The different creditors tried to plan a way to finish job in February. I turned the lien business over to Gehres and Dains in December, 1928, after I found others were putting on liens. I did not find that there was a prior past due mortgage until afterward, sometime before I left company. I got a contract with McGinty Construction Co. to do work on hotel in Safford, only a little work was done on it. It was not abandoned to my knowledge. I know nothing of it since I left.

I have dates of my stock in Garment Company, \$1,500 in all, \$500 pledged to my landlord for rent of house I lived in. Thomas has rest, not pledged. I owe him \$137.50. The Garment Company does not owe me anything for service. I don't know what the stock would bring on a sale. I was told by one Guy Chisum that he would not give five cents per share for stock. The company is a going concern. Mr. Thomas offered me 75 cents on the \$1.00 for my stock last month. I owe \$250 rent, [320] \$500 doctors' bills. I pledged stock to landlord two weeks ago when I moved out. My wife will come back if I get work. The stock has paid no dividends. I sold \$137.50 worth of overalls for the Garment Company and kept the money. They are holding my stock.

(Testimony of Dee Francis.)

Q. You were talking about the books of the Phoenix Plumbing & Heating Company that were kept by Mr. Gehres when you were manager there and prior to the explosion. What books were kept, what regular books of account were kept, so far as you can recall; there was a general ledger which was destroyed? A. Yes.

Q. A cash book was kept? A. Yes.

Q. And that cash book you are sure was not destroyed? A. Yes.

Q. You are positive of that? A. Yes.

Q. Was a journal kept?

A. The journal ledger? Yes, a big book with all the entries put in.

Q. The one that was destroyed?

A. Yes, a large book.

Q. Larger than any of these books here?

A. I think it was something similar to that one on top (indicating); it may have been larger; anyway it wouldn't go into the safe.

Q. What other books were kept as you recall?

A. There was a general ledger; accounts receivable; accounts payable; scrap-book.

Q. What is a scrap-book? [321]

A. All transactions that went into the shop was put down in there?

Q. Was it a bound book or loose-leaf?

A. Sometimes bound and sometimes loose-leaf.

Q. Were they yellow sheets that were put in there? A. No, it was a book.

(Testimony of Dee Francis.)

Q. Is that here at the present time,—do you see it? A. No.

Q. Was that destroyed in the fire? A. No.

Q. When did you last see it?

A. There were a dozen of them probably; they were there in the office; when one was through we put it away.

Q. It was a record of transactions that came in?

A. Yes.

Q. That record of transactions that came in was not a debit and credit entry? A. No.

Q. It was just a record? A. Yes.

Q. What other books?

A. Probably the same as you see there (indicating).

Q. Those are the books then, aren't they?

A. No. Some books are there—the old cash-book isn't there.

Q. Those are the original books outside of the cash book, are they not? A. At that time.

Q. At the time you left?

A. They were there and there were others.

Q. We have told about the cash book and besides this entry of transactions you have told about?

A. I have never looked at those books to see the dates on them; [322] as far as books are concerned they all look alike.

Q. Didn't you examine them?

A. I didn't examine the dates; what I had reference to was the books prior to the explosion.

(Testimony of Dee Francis.)

Q. Would you say that any of these books were not there prior to the explosion?

A. The time book there was there.

Q. Look at the accounts receivable book and contracts receivable book; see if they were there before the explosion.

A. Those books there may be the ones that were there.

Q. Will you look and see.

A. I can't tell by the cover.

Q. What book is that?

(Witness examines Petitioners' Exhibit No. 2 for Identification, No. 7 in Evidence.)

Is that the book that was there prior to the explosion? I call your attention to the entry at the top of the book; what year is that? A. 1928.

Q. Would you say that that was the book that was there prior to the explosion?

A. I believe so.

Q. Referring to Petitioners' Exhibit No. 5 for Identification, No. 7 in Evidence, what book is that?

(Witness examines book.)

A. That is the cash book.

Q. When does that start? A. October, 1927.

Q. To what date does it extend? [323]

A. To May 24, 1928.

Q. Was that a book that was there prior to the explosion? A. Yes.

Q. Referring to Petitioners' Exhibit No. 3 for Identification, No. 7 in Evidence; what book is that?

(Testimony of Dee Francis.)

A. That is contracts receivable. (Examining books.)

Q. Can you say whether that is a book that was there prior to the explosion? A. Yes.

Q. Some of those entries go back to 1928, don't they? A. Yes. [324]

Q. Referring to Petitioners' Exhibit No. 1 for Identification, No. 7 in evidence; what is that book?

A. From its looks it is the accounts receivable book.

Q. The accounts payable, isn't it?

A. Where is the "payable"?

Q. Isn't that a general ledger started to take the place of the ledger that was destroyed, as near as you can ascertain?

A. Yes, a ledger and starts from April (examining book).

Q. Whose handwriting is that?

A. Mr. Gehres'.

Q. Do you find entries starting April 22, 1929, marked "forward"? A. Yes.

Q. Then to the best of your knowledge that was a book started by Mr. Gehres to take the place of the book destroyed in the explosion?

A. I believe this book was there,—but I guess from what you say,—yes, ma'am.

Q. The entries were continued down until the time you left as near as you can see from examination? A. Yes.

Q. Referring to Petitioners' Exhibit 6 for Identification, No. 7 in Evidence; what book is that?

(Testimony of Dee Francis.)

A. That is the cash book. (Examining book.)

Q. When does it start?

A. It starts April 22, 1929.

Q. The first entry reads—

A. "Day after explosion."

Q. Is that the book that continued from April 22, until you left? A. I believe so.

Q. Then that is the book started after the explosion? [325] A. Yes.

Q. What is this book, referring to Petitioners' Exhibit No. 9 for Identification, No. 7 in Evidence.

A. "Contracts and Extras."

Q. Is that a book that was there previous to the explosion? A. I believe so.

Q. Referring to Petitioners' Exhibit No. 4 for Identification, No. 7 in Evidence; what book is that?

A. That is the time book.

Q. What date does it start?

A. July 21, 1928.

Q. And continues to what time?

A. August 10th or 12th.

Q. 1929? A. Yes.

Q. That was a book that was there before the explosion? A. Yes.

Q. Outside of the cash book that you say is not here and the record books of transactions that you testified to, are there any other books that were there prior to the explosion that are not here; general books of account I mean?

A. I cannot see any; no.

Q. At the time of the explosion you said Mr.

(Testimony of Dee Francis.)

Gehres had some books at his house; do you know what books they were? A. No.

Q. Do you know of your own knowledge that he had any books at the house? A. He told me.

Q. When did he tell you? A. The next day.

Q. Did you see him bring the books back the next day?

A. I think when I saw him he had some books on the table.

Q. You didn't see him bring them in?

A. No.

Q. Do you know of any records or pages that were destroyed from any of these books? [326]

A. No.

Q. You stated that pages were taken out when an account was balanced; were those pages destroyed? A. No; they were filed.

Q. Did Mr. Gehres ever say anything to you about his taking any pages out of any of the books and destroying them? A. No.

Q. If he did any such thing you knew nothing about it? A. No.

Q. Have you ever at any time since September of 1927 put any money of your own or money you have borrowed for this, into the Phoenix Plumbing & Heating Company?

A. Not that I can remember.

Leo told me when I left Arkansas if I saw a good proposition to let him know. Leo had worked in my shop before that. I had been in the business, Lyon came with Leo. I told Leo I would go in

(Testimony of Dee Francis.)

with him and run business. I talked with Merchant Police, the head of it, after explosion. I never saw the fuse before, the board looked to me like a plunger known as "plumbers friend." I never found anything in nature of dynamite. When the police got there they asked me my opinion of the explosion. I said it was not robbery, safe was intact. I examined safe from distance and when I went close to it, police told me not to touch it. They would not let us touch anything the first night, trying to get finger-prints. No money or anything was taken, everything was there unless there was a good-sized payment came in Saturday or night before. Just door blown off safe. I don't know what Gehres was doing on that Sunday.

I could not say exactly what was owing to Standard Sanitary on May 1st. They were after me pretty steady for money in May. They never put me on cash basis. I volunteered to pay weekly to reduce account. Sometimes I made payments [327] weekly, sometimes not.

Q. Wasn't there three weeks in there that the Standard Company was paid in cash, on a weekly basis?

A. There might have been. I can explain that. They were insisting on their account being past due, and I said I would pay them every week or every time I got a little money in, I would pay them as fast as I could get it in; I said I would pay, if possible, for the material I was buying at the time;

(Testimony of Dee Francis.)

I spoke to Mr. Nihell about it and he said that would be all right.

Q. Then you did pay that way for three weeks?

A. I cannot say positively. I know this, that some weeks we did, but as to how many weeks I don't know; it might have been two or three or four.

Q. Did it start in April? A. No.

Q. Are you sure?

A. I am pretty positive, although I wouldn't swear.

Q. Whatever the date does show that to be from the books, it was done because they were insisting upon payments being made on their account?

A. Yes.

Q. Did you afterwards cease making payments that way?

A. Well, we paid them when we got the money; as far as ceasing—

Q. I meant on that particular basis? That weekly cash basis?

Q. I mean on the basis you have just testified to?

A. I paid them when I got the money.

A. As I understand it, when I told them I would buy this material and try to pay them weekly for the material I had bought, you understand,—I paid them then, or tried to pay them for what I bought and also on my account, but they didn't restrict me to a weekly basis. The arrangement as [328] far as I understood it between me and the Standard—they didn't say "You must pay every week. I said

(Testimony of Dee Francis.)

I would try to pay every week for the material as I bought it and as much as I could on my big account; I continued paying just as I got money in; does that make my position clear?

The MASTER.—You continued your management of the business in that way?

A. Yes.

The MASTER.—Did you continue up to the time you ceased as manager to make weekly payments?

A. Sometimes I made it before weekly; I paid them money when I got it; it didn't necessarily have to be every week. I told them I would try to pay for the material I bought, every week; they said all right but they didn't insist on the payments; I overpaid them or underpaid them, but business went on and I was giving them money as I got it.

(Examination by Mr. DUFFY.)

Respondents' Exhibit "C" for Identification was signed by me and delivered to Standard Sanitary on March 5th.

(Respondents' Exhibit "C" in Evidence.)

I was borrowing from Bank all the time. [329]

(Testimony of Dee Francis.)

B.-522.

RESPONDENTS' EXHIBIT "C."

In Evidence.

Letter Head.

PHOENIX PLUMBING & HEATING COM-
PANY.

316 North Sixth Avenue,

Phoenix, Arizona.

March 5th, 1929.

Standard Sanitary Mfg. Co.,

447 East Jefferson St.,

Phoenix, Arizona.

Gentlemen:

You are by this instrument authorized to draw on Lincoln Mortgage Co., of this city in the amount of Fourteen Thousand One Hundred Ninety Six Dollars Seventy Seven Cents, (\$14,196.77).

Which sum represents money due this firm for work and materials furnished in the construction of various houses and store buildings owned by the aforesaid Lincoln Mortgage Co.,

This assignment effective this date.

PHOENIX PLUMBING & HEATING CO.,

By D. FRANCIS.

Respondents' Exhibit "C" for Identification.

[330]

(Examination by Mr. PHLEGAR.)

I told Crane Co. and Standard Sanitary of my business in Ft. Smith and how I turned it over to Crane Co., that Phoenix Plumbing & Heating Co.

(Testimony of Dee Francis.)

was Leo's shop and they extended credit. I never told them Lyon or myself had any interest in it. This is receipt I took from Remsbottom.

(Alleged Bankrupts' Exhibit No. 2 in Evidence.)

The Alleged Bankrupts' Exhibit No. 1 in Evidence which had been heretofore identified was admitted in evidence by the Special Master. [331]

B.-522.

ALLEGED BANKRUPTS' EXHIBIT No. 1.

In Evidence.

Filed 11-21-29.

POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS:

That I, Leo Francis of Calhoun, in the County of LeFlore and State of Oklahoma, have made, constituted and appointed, and by these presents do make, constitute and appoint Dee Francis of Phoenix, Arizona, my true and lawful attorney, for me and in my name, place and stead, and to my use, to conduct my plumbing business now located at 316 North 6th Avenue, Phoenix, Arizona, to buy new stock, contract and carry on the business the same as if I was present and acting in my own person, giving my said attorney full power to everything whatsoever, requisite and necessary to be done in the conduct of said business as fully as I could do if present and acting in my own proper person.

Hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereto set my hand and seal this the 9th day of April, 1928.

LEO FRANCIS.

ACKNOWLEDGMENT.

State of Oklahoma,
County of LeFlore,—ss.

Before me, a Notary Public, in and for said County and State on this the 9th day of April, 1928, personally appeared Lee Francis to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal this the 9th day of April, 1928.

Notary Public.

My Commission expires 2/16, 1932. [332]

B.-522.

ALLEGED BANKRUPTS' EXHIBIT No. 2.

In Evidence.

11-27-29.

Phoenix, Arizona.

October 5, 1927.

This is to certify that I have this date received from Dee Francis the sum of \$1,600.00 the same to apply on payment of Plumbing Business, stock in trade, fixtures, equipment and good will of said plumbing business located at 316 North Sixth Avenue, Phoenix, Arizona. Said sale to be made in accordance with an agreement which I have this date

signed in which agreement Leo Francis agrees to purchase said plumbing business and fixtures aforesaid.

WM. REMSBOTTOM. [333]

This bill of sale Leo received later from Remsbottom.

(Alleged Bankrupts' Exhibit No. 3 in Evidence.)

[334]

B.-522.

ALLEGED BANKRUPTS' EXHIBIT No. 3.

In Evidence.

11-27-29.

BILL OF SALE.

KNOW ALL MEN BY THESE PRESENTS:

That Wm. Remsbottom, the party of the first part, for and in consideration of the sum of Ten Dollars and other valuable consideration *Dollars*, lawful money of the United States of America, to him in hand paid by Leo Francis, the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, and his heirs, executors, administrators and assigns

the plumbing business, stock in trade, fixtures and equipment used in said plumbing business, together with the good will of said plumbing business; said plumbing business, stock in trade, fixtures and equipment being located at 316 North Sixth Avenue, Phoenix, Arizona;

TO HAVE AND TO HOLD the same to the said party of the second part, his heirs, executors, administrators and assigns forever; and the said

party of the first part does for his heirs, executors, administrators and assigns, covenant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, to warrant and defend the sale of the said property, goods and chattels hereby made unto the said party of the second part, his heirs, executors, administrators and assigns, against all and every person or persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF I have hereunto set my hand the 14th day of October, A. D. 1927.

WM. REMSBOTTOM. [335]

B.-522.

ALLEGED BANKRUPTS' EXHIBIT No. 1.

In Evidence.

11-21-29.

Reverse of Exhibit:

State of Arizona,
County of Maricopa,—ss.

Before me, _____, a Notary Public in and for the county of Maricopa, state of Arizona, on this day personally appeared Wm. Remsbottom, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 14th day of October, A. D. 1927.

(Seal)

D. E. WILSON,
Notary Public.

My commission expires Feb. 26, 1930.

State of Arizona,
County of Maricopa,—ss.

I (or we) hereby declare on oath that the within named Wm. Remsbottom, party of the first part, is (or are) the sole owner of the chattels set out in the within and foregoing bill of sale, and that said chattels are clear, free and unincumbered.

Witness my hand this 14th day of October, A. D. 1927.

(Seal)

WM. REMSBOTTOM.

Subscribed and sworn to before me this 14th day of October, A. D. 1927.

My commission expires Feb. 6, 1930.

D. E. WILSON,
Notary Public. [336]

B.-522—Page 2.

ALLEGED BANKRUPTS' EXHIBIT No. 1.

In Evidence.

REVERSE OF EXHIBIT.

No. ———.

BILL OF SALE.

Short Form.

From

To

Dated _____, 192—.

Report of Special Master. Filed Feb. 18, 1930.
C. R. McFall, Clark. United States District Court.

(Testimony of Dee Francis.)

For the District of Arizona. H. F. Schlittler, Deputy Clark. [337]

I own no interest in Plumbing Co. when I employed Gehres I left to him all preparation of papers for the company. I signed all mechanics liens just as he prepared them. I had no legal experience, no knowledge of bookkeeping. I left all that to him. Gehres prepared affidavit of partnership and told me it was necessary to get out something in the Bachowetz case. I found out later that it was an affidavit of partnership and I instructed Gehres to change it and he went to Dains to help him. I told him that Leo was sole owner. I never told Gehres at any time that there was a partnership. He told me that he changed affidavit. I told him to fix it in the record. Mr. Dains told me affidavit showing Leo was owner had been filed.

The contract for the High School job was presented to me by a Mr. Rudd of the Standard Insurance Agency or by the architect, and I explained about the partnership to them.

Mr. PHLEGAR.—At this time the alleged bankrupts, D. L. Francis and Lyon Francis, make formal demand upon petitioning creditors the Receiver and the officials of the Commercial National Bank, their agents and employees, to produce in court the cash book kept by the Phoenix Plumbing & Heating Company prior to the 21st day of April, 1929.

Miss BIRDSALL.—On behalf of the petitioning creditors, I wish to state that the Receiver has produced in court all of the records that were identified here, except the burned and cut back of a book in

which are pasted the remains of some cancelled checks of the Phoenix Plumbing & Heating Company; so far as petitioning creditors are concerned, that is the only remnant of the so-called cash book that has been seen by them.

Mr. PHLEGAR.—[338] Do you avow that this is the cash book?

Miss BIRDSALL.—I avow that so far as petitioning creditors can determine the book shows that cancelled checks were placed in there in the same manner as in the cash book which has been identified; further than that we can avow nothing.

Mr. PHLEGAR.—An examination of the exhibit discloses nothing which would identify it as being the cash book testified to by the witness, D. L. Francis, and therefore the exhibit does not meet the demand which we have made and which we still insist upon.

The MASTER.—Did you note the method of keeping the checks in the present cash book?

Miss BIRDSALL.—So far as petitioning creditors are concerned, no books have come into their possession, through the Receiver or otherwise, except as indicated, so far as a cash book is concerned. I offer this in evidence, in response to the demand of attorney for the alleged bankrupts, D. L. and Lyon Francis.

Mr. PHLEGAR.—If that is the purpose for which it is being offered,—it is not the book called for; there is nothing about it to identify it as being cash-book about which we inquired.

Miss BIRDSALL.—It is the only thing we have which even remotely resembles a cash book.

(Testimony of Dee Francis.)

The MASTER.—It may be received in evidence for whatever it may be worth. It is received and marked Petitioners' Exhibit No. 16 in evidence.

(Petitioners' Exhibit No. 16 not being capable of being copied is transmitted in original by order of Court.) [339]

D. L. FRANCIS—Continued testimony.

When the contract for High School was presented to me for signature, I told them that Leo owned business and he said the contract is made out to three of you, it is only a matter of form, go ahead and sign it. So, too, the bond was made out the same way. I told one Mr. Mitchell, representative of Momsen-Dunnegan-Ryan that Leo was going to own business, that was when he helped me make inventory of the Remsbottom business.

(Examination by Miss BIRDSALL.)

Mitchell was asked by Remsbottom to act as his representative in the inventory. At that time I had not started dealing with anyone. It was a long time before partnership affidavit was put on record. I don't think I ever had any conversation with Mitchell after that affidavit was made that we were partners.

I did not give notice to other creditors of the assignment of the Lincoln Mortgage Company to Standard Sanitary on March 5th. There was never any division of profits in the Phoenix Plumbing & Heating Company. I gave Bank statement whenever they asked for them. This piece of a book (Petitioners' Exhibit No. 16 in Evidence) looks

(Testimony of Lyon Francis.)

like the others. I don't know what the custom was in keeping cancelled checks.

TESTIMONY OF LYON FRANCIS, FOR PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

LYON FRANCIS testified. I am Lyon Francis; 27 years old; a plumber. I lived in Poteau, Oklahoma, ten years before coming to Phoenix. I worked as a journeyman plumber for Oklahoma Plumbing Co., owned by Haymaker. I left there six months before I came to Phoenix. I worked all over the state and worked for Dee last at Fort Smith, about three months. I quit him about a month before he went out of business there in May or June, 1927, and went to Paris, Arkansas. I came to Phoenix in October, 1927. I had no talk with anyone about coming here, I came to look for work, never had been here before. I knew nothing about business being purchased from Remsbottom, did not put any money in business. I gave my money to my father. He let Leo have \$496, [340] told me about it, I gave it to my father in August, 1927. I have never been paid back that amount. I went to work for Phoenix Plumbing & Heating Co. ten days after I got there. I am now working for Horrall Plumbing Company. I live on Diamond Street. I have no real estate, furniture, car, stock in Arizona Garment Company, or property of any kind and no bank account or money. I drew wages from company, first \$25 per week, and house rent, later \$40 a week and no house rent, and then \$55 per

(Testimony of Lyon Francis.)

week, \$1.25 per hour. On out of town work I would get expenses. Leo never said he would divide profits. I gave my father money in cash and did not know it was turned over to Leo. I was working for wages under Dee in Arkansas. I was at Plumbing Company the next morning after explosion. I had left there Saturday noon before. I never had anything to do with books of company. I saw nothing that would throw light on explosion. I did not see candle. I was in office an hour that morning. I did not examine the safe or anything or talk to Leo or D. L. or with police about explosion. The place was all torn up. I looked through door, they would not let anybody in, so I went to work. Gehres was not there.

TESTIMONY OF FLOYD M. STAHL, FOR
PETITIONING CREDITORS.

FLOYD M. STAHL testified.

(Examination by Miss BIRDSALL.)

I am a lawyer. I was present at a conversation held in Mr. Norris' room at Adams Hotel, the latter part of July, at which Leo Francis, Mr. Norris, Mr. Lane and Mr. Fretz were present and Leo Francis said at that time that the Phoenix Plumbing & Heating Co. was a partnership run by the three brothers on a profit sharing basis. He said he signed a good many papers as they were presented to him, but seldom read them.

(Examination by Mr. SCHUPP.)

To the best of my recollection Leo denied that it

(Testimony of Thomas W. Nealon.)

was his business alone. He said it was the business of all of them. [341]

TESTIMONY OF THOMAS W. NEALON,
FOR PETITIONING CREDITORS.

Direct Examination by Miss BIRDSALL.

My name is Thomas W. Nealon. I am an attorney at law, and have been engaged in the practice of law in Maricopa County almost 15 years. I was Referee in Bankruptcy for six years.

I was consulted by Leo Francis with regard to the affairs of the Phoenix Plumbing and Heating Company shortly before the bankruptcy proceedings were filed, but cannot advise the date. It could not have been more than a week or ten days before the filing of the petition. A portion of the consultation took place in my office, and a portion of it was at the office of the Phoenix Plumbing and Heating Company. Going back a little I had been out of town and when I came back I found a message to call up Mr. Laney who informed me that he had been consulted in this particular matter and had referred the parties to me. A day or two after that I was called on by Mr. Stahl and Mr. Fretz, Mr. Fretz purporting to represent the Phoenix Plumbing and Heating Company, and they consulted with me in regard to the filing of a voluntary petition in bankruptcy. During the consultation that took place there Mr. Fretz sent a telephone message asking Leo Francis to come to my office which he did.

(Testimony of Thomas W. Nealon.)

Q. Did any conversation take place between you and Leo Francis at that interview at your office concerning the capital that was contributed to the Phoenix Plumbing and Heating [342] Company?

A. The consultation that took place between us there at the office, or at the Phoenix Plumbing and Heating Company was as attorney and client; I took it as a privileged communication.

Q. On the stand the other day Leo Francis and his attorney waived all privilege in that and stated that they were willing for anyone to testify; that any of these witnesses might testify.

I don't think any conversation as to the amount of capital contributed by anyone to the Phoenix Plumbing and Heating Company was discussed in my office, at least by Leo. It was discussed at the meeting that took place at the office of the Phoenix Plumbing and Heating Company. Lyon Francis was present during a part of the interview, but I don't believe he was in hearing distance at the time the conversation between Leo and myself took place. I would like to state what transpired immediately preceding this and led up to it. It was suggested by Mr. Fretz in the presence of Leo in my office that I would go down and see the books of the Phoenix Plumbing and Heating Company before I gave an opinion in the matter, and after some demurring on my part I consented to go down there and down there I met Leo Francis. Mr. Fretz took me down in his car; I also met some other parties in there. Now at

(Testimony of Thomas W. Nealon.)

the time that particular conversation took place in regard to the contribution of capital Mr. Fretz was present, but he was looking up some books to show me, and I doubt if he heard our conversation, in fact I doubt if anyone heard the conversation except Leo and myself. I asked Leo Francis what sum he contributed to the capital of the Phoenix Plumbing and Heating Company and he made the statement that he had contributed \$800.00. I asked him what sum had been contributed by Lyon and he said \$200.00; then I asked [343] him what sum had been contributed by Dee L. and he said he could not tell me the amount that had been contributed by Dee L. As far as I can recall now, that was all the conversation that took place with me upon that subject. I mean the subject of the contribution of capital. I was referred by Leo Francis and Mr. Fretz, who was acting apparently with the authority of Leo Francis, in his presence, to Mr. Gehres, for further information; I asked them to have Mr. Gehres come to my office. I received a message over the telephone from my stenographer that if I wanted to see him I could go to his office. At that time I had the cash book of the Phoenix Plumbing and Heating Company before me and was examining particular entries to which my attention had been called. The book I examined was exactly like this (referring to Petitioners' Exhibit No. 5 for identification and No. 7 in Evidence which was shown to witness). I am trying to recall certain entries I examined. One was with reference to a payment apparently

(Testimony of Thomas W. Nealon.)

to the Arizona Garment Association or some firm name like that. Examining Petitioners' Exhibit No. 6 for Identification and No. 7 in Evidence which you hand me, this was the book to which my attention was particularly called and which I examined at that time. There were particular entries in this book which were called to my attention by Mr. Fretz, but I cannot give you very much detail of it. This had reference to the payment of the Arizona Garment Association as I recall it. The name was mentioned in connection with it. Here is one of the entries on May 10th:

“Arizona Garment Mfg Company \$50.00; on May 8th, \$170.00.”

There was some larger amounts that were called to my attention. Here is one of the 31st of \$113.46; there were a number of those entries that were called to my attention—perhaps some to other parties. They were called to my attention as bearing [344] possibly upon the question of whether or not to file a voluntary petition for the parties. I don't know that the parties were specifically mentioned other than Leo Francis and the Phoenix Plumbing and Heating Company, and Lyon Francis was introduced to me while I was making the examination. In order to determine the question of the filing of a voluntary petition it was necessary for me to determine who was the owner of the Phoenix Plumbing and Heating Company and I made an examination of the books and of Leo Francis for that purpose.

(Testimony of Thomas W. Nealon.)

My attention had been called to the fact that the certificate of partnership had been filed in the County Recorder's office and an explanation had been made to me in regard thereto. I felt that in order to properly advise, not only in what names the petition should be filed, if any should be filed, but as to the amounts of fees and costs that should be paid, I would have to get further information on the particular subject of whether a partnership existed within the meaning of the bankruptcy law. I do not recall that I examined Book No. 5 at all, as to the inception of the Phoenix Plumbing and Heating Company in 1927. I inquired as to the amount of capital subscribed by each of the alleged parties. I did not ask any questions as to the total amount of capital that had been contributed at the time of the purchase of the Remsbottom business. I had only one purpose in mind and that was the question of who were the parties who should be included in the petition if I was to file it. I determined that matter to my own satisfaction. I based the conclusion that I reached upon the statements made to me by Leo Francis, the examination of the records as produced there that I did examine, and upon the statements made to me in my office either by Leo or by Mr. Fretz and by Mr. Stahl in the presence of either Mr. Fretz or Leo Francis, including the statements in regard to the certificate of partnership [345] having been recorded and the circumstances and purposes for which it was recorded. The principal questions that I directed to Leo Francis at that

(Testimony of Thomas W. Nealon.)

time were to ascertain what capital was contributed to the firm, if it was a firm, by those who were named in the co-partnership certificate as members of the partnership. The questions were confined to that purpose; a further statement was made to me in regard to the father of those boys. I communicated my conclusions and determination of the way the petition would have to be filed to Leo Francis. I told him I thought the proper procedure would be to file a voluntary petition on behalf of himself, and of Lyon Francis as members of the firm of the Phoenix Plumbing and Heating Company, and the Phoenix Plumbing and Heating Company, as a firm, all in one, and taking the proper action so that D. L. Francis' rights and obligations might be determined and his interest as a partner determined.

(Examination by Mr. PHLEGAR.)

It was called to my attention by Leo Francis that D. L. Francis was no longer working with him and I think the date was given to me, or at least the approximate date on which he ceased to have any active connection with the management of the business.

I will state the facts in regard to the question of a partnership affidavit. I don't think anything was said between Leo and myself. Something was said by Mr. Fretz and possibly by Mr. Stahl and in Mr. Fretz's presence. The statement was first made to me as to the certificate of partnership that had been filed. I think that is the term they

(Testimony of Thomas W. Nealon.)

applied to it. And then the statement was made in regard to the case that was pending, the name of the counsel who had advised the filing of the certificate was given to me, and then the subsequent action of the filing of the affidavit by Leo Francis was mentioned by [346] either one or the other of those two. Then subsequently that matter was mentioned to me by Mr. Gehres. I want to correct what was perhaps a false impression; when he (Gehres) said he would not come to my office, I waived all questions and went to his office. I don't know whether anything was mentioned further than that the certificate of partnership was filed. I did not examine the instrument itself. It was stated to me that the purpose of filing was because a lien had been filed against a property in the name of the partnership, and counsel in the case had advised that a certificate would have to be filed before the suit could proceed further; something to that effect. I was informed that subsequent to the filing of that certificate an affidavit had been made by Leo that he was the sole owner of the business.

(Examination by Miss BIRDSALL.)

I did not ever see any such affidavit.

(Examination by Mr. SCHUPP.)

I am sure that I did not misunderstand Leo's statement to me when I went down to the Phoenix Plumbing and Heating Company that he had contributed \$800.00, and I am sure that he did not say \$1800.00. I had that particularly in mind as I was struck with the small amount by each of these two men. [347]

TESTIMONY OF C. B. FRYBERGER, FOR
PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

I was employed by Phoenix Plumbing & Heating Company during June and July, 1929, as manager, and September to December, 1928, as estimator. I have been in plumbing and heating business for past thirty years in Denver, Colorado. I quit Phoenix Plumbing and Heating Company July 31 or August 1, 1929. I had charge of books (referring to Petitioners' Exhibit 6 for Identification, 7 in Evidence); this is cash book used while I was there. I never had occasion to look at that book indicating (Petitioners' Exhibit 5 for Identification, 7 in Evidence) which closed in May, 1928. Petitioners' Exhibit 6 for Identification, 7 in Evidence, is the only book I had anything to do with. It was being used when I was there. I never saw any other cash book immediately preceding Petitioners' Exhibit 6 for Identification, 7 in Evidence. I was not present at any conference between D. Francis and Fretz. I saw no other cash book. I had some general conversation about destruction of books in explosion. Gehres left about five days after I took charge and turned books over to Fretz. I don't remember books being taken over to Bank, just some files. Fretz took them if any went, and brought them back. Petitioners' Exhibit for Identification No. 11, a form of contract I have seen. Nothing was said to me about my being assignee for benefit of creditors. About July 11, 1929, I saw

(Testimony of C. B. Fryberger.)

it in Townsend's office and said I would not consider it. I told Leo Francis I would not consider it.

I received letter (Petitioners' Exhibit No. 17 in Evidence). [348]

B.-522.

PETITIONERS' EXHIBIT No. 17.

In Evidence.

11-29-29.

Letter Head.

BRUNSWICK-KROESCHELL COMPANY,

4221 Diversey Ave.

Chicago, Ill.

July 5, 1929.

Phoenix Plumbing & Heating Company,

316 North Sixth Avenue,

Phoenix, Arizona.

Gentlemen:

SUBJECT: OIL BURNING EQUIPMENT CO.
ASSIGNMENT (FILE #D-10).

We received a wire from you on June 21st and have been waiting for the letter which you said would follow. We have not received such a letter from you, and inasmuch as you have not forwarded us your remittance for \$985.00 which represents the amount owing the Oil Burning Equipment Company and which was assigned to us, we feel that we should take some legal steps toward the collection. This amount is due us and we expect you to pay it to us at an early date.

(Testimony of C. B. Fryberger.)

If you have not already done so, kindly wire us in reference to the amount due. Your prompt attention will be appreciated.

Yours very truly,
BRUNSWICK-KROESCHELL COMPANY,
By WALTER G. COBB.

Chief Accountant Kroeschell Plant.

WGC: LW. [349]

Petitioners' Exhibit No. 13 for Identification is a balance sheet of the company as of July 20th and has the figures as I remember them. I was not present when figures were finally arrived at. I furnished figure for "estimated labor to complete contracts." I just took the different contracts, ascertained the amount of labor performed and estimated labor to complete them. Nihell of Standard Sanitary furnished figures for material. Asylum contract was completed after I got there, when I left City Hall was practically complete, but not accepted. E. J. Bennett job was completed when I went there in June. Schwentker job was not completed when I left. Central Heating job was not complete. Junior College was accepted when I got there. Library and class-room job was not finished when I left. Tritle job was completed after I got there in July, latter part. Yuma High was not completed. The Bachawetz job was tied up in litigation over a year before I went there. I did not consider it a live asset of Plumbing Company. It has no market value. There was \$14,000 paid by Lincoln Mortgage Company to Phoenix

(Testimony of C. B. Fryberger.)

Plumbing & Heating Company shortly after I went there, \$1300.00 of it was paid Standard Sanitary and \$1,000 held for Phoenix Plumbing & Heating Company pay-roll. I did not make up or submit any statement for purpose of credit after I went in there. We showed the contracts on statements, the amount that had been paid on them and the balance due, that was the only way they could be taken as asset. In my own experience of thirty years unfinished contracts were held as liabilities until finished. That is custom of plumbing business.

Mr. Nihel, Mr. Gehres and Leo Francis asked me to go in as manager under a contract of \$250 per month salary and a third interest if company was solvent at end of 15 months. I examined books and statements of bookkeeper and creditor. I [350] estimated stock at \$4,500. Outside accounts receivable and contracts receivable and stock, the only other assets were second-hand trucks and office fixtures, all worth \$500.00.

(Examination by F. J. DUFFY.)

I was there all the time. The concern had fourteen unfinished contracts with various amounts of money coming in, and various amounts of work to be done. I was trying to finish these and get new business. Part of my time was taken up by different creditors. I was at one or two conferences at the Bank. Nihell, Korrick, Mr. McNichols, Fretz, Gehres and one other director of the Bank was there. Conference was latter part of July. I believe that Mr. Norris of the Commercial Bank said,

(Testimony of C. B. Fryberger.)

we have examined your company's books and are satisfied it is a going concern and can pull out and we are willing to wait a while and give Mr. Fryberger a chance to pull out. The auditor did not make a complete audit. His report went to Commercial National Bank.

The Asylum job material had been purchased but the radiation had not been installed. The Lincoln Mortgage Company amount, \$14,000.00 was paid by check to Phoenix Plumbing & Heating Company.

Q. And the check was endorsed over by the Plumbing Company to the Standard Sanitary?

A. No, sir. I went to the Citizens Bank and had two cashier's checks made, one for \$13,000 and one for \$1,000.

Q. Taken to the bank by yourself? A. Yes.

Q. And you took in place thereof a check for \$13,000 to the Standard Sanitary Company and a check for \$1,000 to the Phoenix Plumbing & Heating Company? A. Yes. [351]

Q. So that that \$13,000 never went through the books of the Phoenix Plumbing & Heating Company? A. It had to go through the books.

Q. You took the check?

A. It went through the books.

Q. Then your books showed a credit of \$1,000 you received?

A. We had to show it to the credit of the Lincoln Mortgage Company to settle their account.

Q. But the money was not actually deposited to

(Testimony of C. B. Fryberger.)

the credit of the Phoenix Plumbing & Heating Company.

Miss BIRDSALL.—We object to that question. It is a credit to the Phoenix Plumbing & Heating Company just the same.

Q. It was a fact, was it not, that the reason it was handled that way was because that account had been assigned to the Standard Sanitary Manufacturing Company for some time before?

A. That was my understanding of it.

It was because of that assignment we were receiving material from the Standard Sanitary. The contracts were listed as assets only to the amount of money coming on them. They were not assets, some we lost money on. There wasn't enough money coming in to finish them. If at any time in June, the contracts could be liquidated they would be assets to the amount of the liquidation. The Safford job was not considered in my estimate. The Safford job was going on a week before I got there, there was possibly \$1,000 worth of labor and material on job. I had been going over job several days before I signed this contract, referring to (Petitioner's Exhibit No. 8 in Evidence).

(Examination by Miss BIRDSALL.)

Norris made statement previously testified to in June, not July, Mr. Norris put it just as I said. Mr. Norris had statements [352] of company before him at that time, but on July 20, he had different statement. On that statement there was an estimate of labor and material necessary to complete

(Testimony of Jerry Lee.)

these contracts. Only way contracts can be liquidated is to finish them. I think McGinty Construction Company had to finish Safford job. It was under construction when I left. [353]

TESTIMONY OF JERRY LEE, FOR PETITIONING CREDITORS.

I am a public accountant and tax auditor admitted to practice before Treasury Department, and in that business twenty odd years. In Phoenix for past three years as public accountant. On August 13, 1929, I was employed by three bonding companies to audit books of Phoenix Plumbing & Heating Company with reference to account claims due the Standard Sanitary Company. Spent eight weeks on job and examined every record in their possession as far back as April, 1928. The books were incomplete and hard to classify as they did not have a recognized method of accounting, no general ledger, no journal. Had a book showing contracts receivable containing only asset side and not liability, also had accounts receivable. There was no control of these and no way to tell whether amounts shown were actual or fictitious. Then they had an accounts payable book and about 1500 or more accumulated checks and some stubs, that constituted bulk of records. There was no general ledger covering time prior to April 21, 1929.

Petitioner's Exhibit No. 5 for Identification, 7 in Evidence, is a cash book for period October 1, 1927, to May 24, 1928, inclusive. It is at best a

(Testimony of Jerry Lee.)

memorandum. There was no other cash book up to April 21, 1929; the new one, Petitioners' Exhibit No. 5 for Identification, 7 in Evidence, opens with "balance day after explosion." There is a gap from May 24, 1928, to April 22, 1929. Exhibit No. 6 for Identification, 7 in Evidence, shows receipts and disbursements from April 22, 1929, and incomplete to July 30, 1929. First entry is April 22, 1929, "Day after explosion Cash in Bank—cash on hand—1451—\$443.69." Pet. Ex. 3 for Identification, 7 in Evidence, is record called contracts receivable, shows only asset side of contracts, should be journalized, showing liability side also. No record of liability on contracts, no cost account system kept. It would be hard to identify labor or material going into any one job. Dates [354] in this book in 1929 and 1928, its both prior and subsequent to explosion. Here is one after explosion called Murphy job. Pet. Ex. 2 for Identification, 7 in Evidence, is record of accounts receivable. Dates are in 1928 and 1929, early 1928 to and including 1929. There is no control account. It is hard to say whether amounts are paid or still due. By control account I mean it shows a debit and credit. When we did a job for a person, we charged him with it. That would be the debit side. If he paid it, he would be credited. That is the credit side. Then at the end of a given period we would reconcile our account book on that sheet, if they were balanced and that would indicate that we had credited him with payments he might have made. That is double-

(Testimony of Jerry Lee.)

entry bookkeeping. This is what we used to call the "hook" system. It is a kind of memorandum.

Pet. Ex. 1 for Identification, 7 in Evidence, is accounts payable ledger, first part, second is presumed to be expense accounts. I could find no entries prior to explosion. The bookkeeper told me it was made up after explosion. It probably represents accounts payable. It was intended for general ledger, but was not followed out, used more for memoranda than bookkeeping.

MASTER.—It was initiated as General Ledger?

A. It could have been used for that; if properly followed. It doesn't set up capital assets, capital liabilities, or even bank balance. It's more memoranda than bookkeeping.

Pet. Ex. 9 for Identification, 7 in Evidence, appears to be for purpose of billing customers for small amounts. I never used it. It is marked contracts and extras, but there are no contracts in it. It was probably used for duplicate invoices.

Pet. Ex. 4 for Identification, 7 in Evidence, is weekly time book. Covers period from July 21, 1928, to July 27, 1929, [355] two weeks off not added subsequent to last date. It is kept in accepted manner.

Pet. Ex. 7 for Identification, 7 in Evidence, are two check books, one containing check stubs and unused checks. I used first one but not second. Date of second is July 27, 1929; contains only few stubs. It seems to cover **pay-roll**.

Pet. Ex. 12 for Identification, 7 in Evidence, con-

(Testimony of Jerry Lee.)

tains checks, bank statements, and more check stubs, constitutes a record of bank account with Commercial National Bank and statement and stubs of check books used by D. L. Francis; also various checks used and referred to in investigation of company's affairs.

It is impossible to find origin of balance carried forward April 22, 1929. It appears nowhere in books. All books are here that were submitted to me by Leo Francis and Fretz on August 15th, 1929. I had access to them after they were turned over to receiver on August 17th.

D. Francis' account appears in accounts payable. Pet. Ex. 1 for Identification, 7 in Evidence, in second part and starts April 26, 1929, and ends June 4, 1929. It is all debits, no amount carried forward; and shows no amounts due D. Francis. It shows payments made during that period out of company funds listed by date, number and amount, and this can be further identified by checking small stubs which show what he paid them for. All are signed by D. Francis. Nothing to indicate they were for business of company.

448 *Standard Sanitary Manufacturing Company*

No.	Date.	Amount.	Payee.
—	Apr. 26-29	\$1.00	Cash.
F 78	Apr. 24	2.00	Marlar Drug Co.
F 79	Apr. 24	25.00	_____
F 80	Apr. 28	1.00	J. D. Connor.
F 81	Apr. 24	6.50	Marlar Drug Co.
F 82	Apr. 24	20.00	Doctor Bill. [356]
F 83	Apr. 24	10.00	St. Jos. Hospital.
F 84	Apr. 24	10.00	Dr. Jordan.
F 85	Apr. 24	26.75	St. Jos. Hospital.
F 86	Apr. 24	3.50	Barber Shop.
F 87	Apr. 24	2.00	Groceries.
F 88	Apr. 24	45.00	Berta Francis.
F 89	Apr. 24	4.00	Sun Drug Co.
F 90	Apr. 24	9.00	Pease.
F 91	Apr. 24	6.00	Marlar Drug Co.
F 92	Apr. 24	10.00	Dr. Pease.
F 93	Apr. 27	45.00	Barber Shop.
2498	Apr. 27	45.00	
2528	Apr. 27	148.46	
2531	Apr. 29	16.15	
2547	May 2	48.73	
2586	May 4	45.00	
2587	May 6	2.00	
2616	May 11	45.00	
—	May 11	.25	Cash.
2672	May 18	45.00	
2686	May 18	50.00	

No.	Date.	Amount.	Payee.
2719	May 27	\$48.73	Pac. Finance Corp.
F 93	May 22	1.00	Barber.
F 94	May 22	10.00	Father.
F 95	May 22	2.00	Marlar Drug Co.
F 100	May 22	5.00	Elias Francis.
F 102	May 22	30.00	Elias Francis.
—	May 23	.25	Cash.
—	May 23	2.40	Cash.
2729	May 24	2.75	Mtn. States Tel. Co.
2731	May 25	45.00	Berta Francis.
—	May 31	.50	Cash. [357]
F 107	May 27	1.00	_____
F 109	May 31	12.00	_____
2775	June 1	45.00	Berta Francis
2805	June 4	12.35	Central Ariz. L. & P. Co.
2808	June 4	2.60	City Water Dept.

Total \$848.52 in forty days includes salary paid to Berta Francis, five weeks @ \$45.00 per week. Lyon Francis has no account, neither has Leo. There is a joint account where brothers were paying Joe Francis, their father. All payments seem to be made in 1929, three debits totaling \$108.00, credits are \$48.00. Joe Francis has a balance due him of \$72.00. It doesn't show what for. Only way to find what amounts paid or credits given D. L. Francis prior to April 21, 1929, is in time book or check stubs. Berta Francis' name is in time book. D. L. Francis is not. I did not look for any canceled checks to him prior to April, 1929, though

there were quite a few in company files. There are two Arizona Garment accounts, one payable and one receivable. By taking checks and check stubs we can tell what payments to Arizona Garment Company were for such as pay-rolls and various things. Petitioners' Exhibit No. 1 for Identification, No. 7 in Evidence, accounts receivable contains account of Arizona Garment Company, April 26, 1929, \$35.75. There is no credit showing payment of that account. Joe Thomas Loan Account reads as follows:

April 26, 1929, payment ck. #2496....	\$180.00
May 4, 1929, payment ck. 2583....	98.52
May 8, 1929, payment ck. 2602....	170.00
May 10, 1929, payment ck. 2611....	50.00
May 11, 1929, payment ck. 2645....	113.46
May 22, 1929, payment ck. F 98....	125.00
May 22, 1929, payment ck. F103....	250.00
May 22, 1929, payment ck. 2724....	100.00
May 27, 1929, payment ck. F105....	50.00
Total.....	1136.98

The other side reads "A Loan Account from Dee Francis to Joe Thomas through company" and shows total credit of 1087.82, as follows: [358]

April 22, 1929, forward U. S. Government	
4-12-29, insurance loan.....	\$ 241.00
April 23, 1929, Cash.....	5.00
April 27, 1929, U. S. Government Insur-	
ance loan	275.00
May 15, 1929, U. S. Government Insur-	
ance loan	526.82

(Testimony of Jerry Lee.)

May 22, 1929, Southern Surety Company,
sickness insurance 40.00
Total credit.....\$1087.82

Q. I hand you Petitioners' Exhibit No. 12 in Evidence, being checks, Arizona Garment Company, \$611.98, and ask if these appeared in the account you have just read, on the debit side.

A. Yes; all five of them appear in this account.

Q. Do they comprise the whole account?

A. No, there are four other checks.

Checks to Joe Thomas, Petitioners' Exhibit No. 10 in Evidence, Nos. 838 for \$712 and 2382 for \$1,000, are not included in above account. There is no record in any book of these as there is no cash book for April 12, 1929.

(Examination by F. J. DUFFY.)

All checks after April 22, 1929, appear on books, checks for \$712.00 and \$1,000 payable to Joe Thomas do not appear anywhere in records.

(Examination by Miss BIRDSALL.)

There is no record of Petitioners' Exhibit No. 11 in Evidence check to Carom Mercantile Company dated Mar. 15, 1929 in books of Phoenix Plumbing & Heating Company. There was no cash book covering that period. The Carom check is from check book of Dee Francis. It so appears on stub which is marked "For Factory."

Q. Referring to Petitioners' Exhibit No. 9, check of April 1st, 1928, to Walter Shayab, does that appear on the cash book of April 1, 1928? [359]

A. I have never seen that on the cash book and it doesn't appear in the month of April, 1928.

(Testimony of Jerry Lee.)

Q. Referring to this account, is there an account of Walter Shayab?

(Witness examines book.)

A. Yes, it is spelled a different way here.

Q. What book is that kept in?

A. That is Petitioners' No. 1 for Identification, No. 7 in Evidence—loan account.

Q. What is the record on that?

A. The name is Walter Schaybe, loan account; no year date. May 22, payment check #2,722, \$1,015.00. May 27, check F-106, \$205.00, that is the debit side. On the credit side is: April 22, forward \$1,015.00; date, ditto, for \$205.00; the account appears to be in balance.

Q. There is no record anywhere indicating where that "forward balance" came from? A. No.

Q. The \$205 appears as brought forward, too?

A. Yes.

Q. What is the date of that \$205?

A. April 22 is marked "ditto."

Q. Would that be 1929?

A. It must have been, as the book wasn't made up until 1929.

Q. What is the date of the check?

A. March, 1928.

Q. Is that account of Walter Shayab shown in the check stubs of that year?

A. I have no stubs on that date. It is shown on the cash book as of May 27, 1929—the payment of that check to Schaybe; [360] that is No. F-106.

Q. On this check of April 1, 1928, that is marked F-106, is that on a book of May, 1929? A. Yes.

(Testimony of Jerry Lee.)

Q. And the former stubs of May, 1929, are numbered F-100—is that correct? A. Yes.

Q. Will you refer to stub No. 2722 in the other book and see if that is the same?

A. (Reading:) “May 20, 1929, \$1015.00.” It says “Charge to Arizona Garment Mfg. Company.”

Q. What is the record on the cash book?

A. This entry was in lieu of that smaller check; that is marked, “Schaybe. Charge to Arizona Garment Co.”

Q. Is there any charge against the Arizona Garment Company for that check?

A. No, nor is there a charge against Joe Thomas.

Q. There is no record of the \$1,015 check except the stub?

A. There is the cash book entry.

Q. Just read that entry?

A. Cash book, page 13, dated May 22, 1929, line 18, shows Mr. Schaybe; the entry has been erased and is blurred and there appears to be a 60-day loan, check No. 2722, total amount \$1,015.00. Charge in the general ledger claim and marked “loan account.” It is changed in both places.

Q. Is there a record on the cash book of May 27th, 1929, indicating anything regarding the \$205 payment which you have just testified to as showing on the loan account of Walter Shaybe subsequent to the \$1,015 payment?

A. This is on Book #6 for Identification, #7 in Evidence. On page 15, disbursement side of the cash book, line 10. “May 27, 1929,” there is an

(Testimony of Walter Thalheimer.)

entry "F-106, Walter Shaybe, \$205.00." General ledger claim. [361]

Q. Entry is made as of that date? A. Yes.

TESTIMONY OF WALTER THALHEIMER,
FOR PETITIONING CREDITORS (RE-
CALLED).

I have here further records of the Phoenix Plumbing & Heating Company consisting of mutilated checks and vouchers admitted as:

(Petitioners' Exhibit No. 18 in evidence) the originals of which are filed with this record for the reason that they are of such a nature that copies thereof cannot be inserted herein.

Also cancelled checks and stubs introduced as (Petitioners' Exhibit No. 19 in evidence) originals of which are filed herewith.

Statements of dealings with Standard Sanitary Company (Petitioners' Exhibit No. 20 in evidence), originals of which are filed herewith.

Miscellaneous statements from various firms to company (Petitioners' Exhibit No. 21 in evidence), originals of which are filed herewith.

Complaint and amended complaint in Bachowetz case (Petitioners' Exhibit No. 22 and 23 in Evidence). [362]

B.-522.

PETITIONERS' EXHIBIT No. 22.

In Evidence.

12-3-29.

In the Superior Court of Maricopa County, State of
Arizona.

No. 31,031.

SIDNEY P. OSBORN and NERI OSBORN, Jr.,
Plaintiffs,

vs.

W. J. BACHOWITZ and ROSE BACHOWITZ,
His Wife, VICTOR F. RODRIQUEZ, E. H.
WHEAT, WALTER DUBREE, CLINTON
CAMPBELL, LUTHER HILL, JAMES A.
BOYD, O. M. MOORE, H. L. and A. J.
CHRISTIAN, ALLISON STEEL MANU-
FACTURING COMPANY, a Corporation,
PHOENIX BUILDERS' SUPPLY COM-
PANY, a Corporation, C. P. MUNGER
ROCK COMPANY, a Corporation, ARI-
ZONA SASH AND DOOR COMPANY, a
Corporation, and JOHN DOE and JANE
DOE, & PHOENIX PLUMBING & HEAT-
ING CO.,

Defendants.

SUMMONS.

The State of Arizona to: W. J. Bachowitz and Rose
Bachowitz, His Wife; Victor F. Rodriquez;

E. H. Wheat; Walter Dubree; Clinton Campbell; Luther Hill; James A. Boyd; O. M. Moore; H. L. and A. J. Christian; Allison Steel Manufacturing Company, a Corporation; Phoenix Builders' Supply Company, a Corporation; C. P. Munger Rock Company, a Corporation; Arizona Sash and Door Company, a Corporation; and John Doe and Jane Doe, Defendants, GREETING:

YOU ARE HEREBY SUMMONED AND REQUIRED to appear in an action brought against you by the above-named plaintiffs in the Superior Court of Maricopa County, State of Arizona and answer the Complaint therein filed with the Clerk of said Court, at Phoenix, in said County, within twenty days after the service upon you of this Summons, if served in this said County, or in all other cases within thirty days thereafter, the times above mentioned being exclusive of the day of service, or judgment by default will be taken against you.

Given under my hand and the seal of the Superior Court of Maricopa County, State of Arizona this 22d day of October, 1929.

WALTER S. WILSON,
Clerk of the Superior Court.

By M. B. Fitts,
Deputy Clerk.

Acceptance of service 10-25-29.

W. J. T.

B.-522. Petitioners' Exhibit No. 14 for Identification. [363]

B.-522.

PETITIONERS' EXHIBIT No. 22.

In Evidence.

12-3-29.

Back of Exhibit:

State of Arizona,
County of Maricopa,—ss.

I HEREBY CERTIFY that I received the within Summons on the — day of —, A. D. 1929, at the hour of — M., and personally served the same on the — day of —, A. D. 1929, —, being the defendant — named in said Summons, by delivering to —, County of Maricopa, a copy of said Summons, to which was attached a true copy of the complaint mentioned in said Summons.

Dated this — day of —, A. D. 1929.

_____,
Sheriff.

By _____,
Deputy Sheriff.

Fees, Service.....	\$ _____
Copies	\$ _____
Travel — miles.....	\$ _____
Publication	\$ _____
Total	\$ _____

No. —. In the Superior Court of Maricopa County, State of Arizona. Sidney P. Osborn and Neri Osborn, Jr., Plaintiffs, vs. W. J. Bachowitz and Rose Bachowitz, His Wife, et al., Defendants. Summons. [364]

In the Superior Court of the County of Maricopa
in and for the State of Arizona.

No. 31,031.

SIDNEY P. OSBORN and NERI OSBORN, Jr.,
Plaintiffs,

vs.

W. J. BACHOWITZ and ROSE BACHOWITZ,
His Wife, VICTOR F. RODRIQUEZ, E. H.
WHEAT, WALTER DUBREE, CLINTON
CAMPBELL, LUTHER HILL, JAMES A.
BOYD, O. M. MOORE, H. L. and A. J.
CHRISTIAN, ALLISON STEEL MANU-
FACTURING COMPANY, a Corporation,
PHOENIX BUILDERS' SUPPLY COM-
PANY, a Corporation, C. P. MUNGER
ROCK COMPANY, a Corporation, ARI-
ZONA SASH AND DOOR COMPANY, a
Corporation, and JOHN DOE and JANE
DOE,

Defendants.

COMPLAINT.

Come now the plaintiffs, Sidney P. Osborn and Neri Osborn, Jr., through their attorney, H. S. McCluskey, and for cause of action against defendants, complain and allege, as follows:

I.

That the plaintiffs, Sidney P. Osborn and Neri Osborn, Jr., and each of them, are residents of the

City of Phoenix, County of Maricopa, State of Arizona.

That the defendants, W. J. Bachowitz and Rose Bachowitz, his wife, and each of them, are residents of the City of Phoenix, County of Maricopa, State of Arizona.

That the defendants, Victor F. Rodriguez, E. H. Wheat, Walter Dubree, Clinton Campbell, Luther Hill, James A. Boyd, O. M. Moore, H. L. and A. J. Christian, are all of them residents of the City of Phoenix, County of Maricopa, State of Arizona;

That the defendant, Allison Steel Manufacturing Company, is a corporation, duly incorporated and existing under and by virtue of the laws of Arizona, with its principal place of business in the City of Phoenix, County of Maricopa, State of Arizona; [365]

That the defendant, C. P. Munger Rock Company, is a corporation, duly incorporated and existing under and by virtue of the laws of Arizona, with its principal place of business in the City of Phoenix, County of Maricopa, State of Arizona;

That the defendant, Arizona Sash and Door Company, is a corporation, duly incorporated and existing under and by virtue of the laws of Arizona, with its principal place of business in the City of Phoenix, County of Maricopa, State of Arizona;

That John Doe and Jane Doe are unknown to the plaintiffs and such names are fictitious names and the plaintiffs pray to be allowed to insert the true names of said persons, corporations or partner-

ships, when discovered, with the same effect as if said names had been properly and correctly written herein at this time.

II.

That on or about the 1st day of February, 1928, the defendants, W. J. Bachowitz and Rose Bachowitz, his wife, became and were justly indebted to J. W. Sullivan, of Prescott, Yavapai County, State of Arizona, in the sum of Four Thousand Seven Hundred (\$4,700.00) Dollars, and being so indebted, in consideration thereof, and for value received, the said defendants, W. J. Bachowitz and Rose Bachowitz, his wife, made, executed and delivered to the said J. W. Sullivan, a certain promissory note for the sum of Four Thousand Seven Hundred (\$4,700.00) Dollars, with interest thereon at the rate of Seven (7) per cent per annum, as will more fully appear by the said instrument, ready to be produced in court, and by a copy of the same herewith filed and marked Exhibit "A" and made a part of this complaint;

That to secure the payment of the principal sum and interest above mentioned, the said defendants, W. J. Bachowitz [366] and Rose Bachowitz, his wife, by their deed, dated the 1st day of February, 1928, conveyed to J. W. Sullivan, in fee simple, the following described parcel of land, with the appurtenances, situated in the City of Phoenix, County of Maricopa, State of Arizona, to wit:

Lot two (2) in Block six (6) East Evergreen Addition according to the map or plat thereof

on file and of record in the office of the County recorder of Maricopa County, State of Arizona, in Book 3 of Maps at page 55 thereof;

and the deed to which is recorded in the office of the County Recorder of Maricopa County, State of Arizona, in Book of Mortgages No. 218 at page 173, subject, however, to a condition of defeasance upon the payment of the principal and interest aforesaid, according to the tenor and effect of the said instrument, which said mortgage was, on the day of its date, duly acknowledged by the said defendants, W. J. Bachowitz and Rose Bachowitz, his wife, and on the 4th day of February, 1928, recorded in the office of the Recorder of the County of Maricopa, State of Arizona, at 9:09 o'clock in the forenoon of said day, in Book 209 of Mortgages, on pages 255 and 256, as, by the said mortgage and its accompanying certificates of acknowledgment and recording, ready to be produced in court, and by a copy thereof herewith filed and marked Exhibit "B," and made a part of this complaint, will more fully appear.

III.

That the plaintiffs herein aver that the said promissory note and mortgage were on the 6th day of October, 1929, and before the commencement of this action, duly assigned, transferred, delivered and endorsed to the plaintiffs herein for a valuable consideration, and which assignment of promissory note and mortgage on the day of its date, duly acknowledged, and afterwards on the 9th day of Oc-

tober, 1929, recorded in the office of the Recorder for the County of Maricopa, State of [367] Arizona, at 11:27 o'clock in the forenoon of said day in Book No. — of — on page —; as by the said Assignment of Mortgage and its accompanying certificates of acknowledgment and recording, ready to be produced in court, and by a copy thereof herewith filed and marked Exhibit "C," and made a part of this complaint, will more fully appear.

IV.

That the defendants, W. J. Bachowitz and Rose Bachowitz, his wife, failed to comply with the conditions of the said promissory note and mortgage by omitting to pay the sum of Four Thousand Seven Hundred (\$4,700.00) Dollars, with interest thereon at the rate of seven (7) per cent per annum, which by the terms of said note and mortgage became due and payable on or before the first day of November, 1928, the interest being payable at maturity; and that there is now justly due to the plaintiffs the sum of Four Thousand Seven Hundred (\$4,700.00) Dollars principal with interest thereon in the amount of Two Hundred and Forty-six and 75/100 (\$246.75) Dollars with interest from the first day of November, 1928, on the said Four Thousand Seven Hundred (\$4,700.00) Dollars and the said Two Hundred and Forty-six and 75/100 Dollars (\$246.75), at the rate of ten (10) per cent per annum as was specifically covenanted and agreed upon in the said mortgage and note.

V.

That the defendants, J. W. Bachowitz and Rose Bachowitz, his wife, failed to comply with the conditions of the said mortgage by omitting to pay to the proper officers all taxes and assessments assessed upon the said property or upon or within described note and mortgage, when the same became due, and to deliver the receipts therefor to the mortgagee, his representative or assigns, as was duly required of them, so to do, in the said mortgage heretofore described. And the mortgagee, J. W. Sullivan, because of default of the said defendants to [368] pay the said taxes and assessments and in order to maintain his liens, was compelled to pay state, county, school district and city taxes and street improvement assessments and the interest thereon, assessed upon the said property, as follows, to wit:

November 5, 1928, state and county and school district taxes	\$ 25.96
March 15, 1929, City of Phoenix taxes	15.25
March 15, 1929, City of Phoenix taxes	15.24
October 14, 1929, Interest on street improvement assessment	13.43
October 14, 1929, Principal on street improvement assessment	125.34
	<hr/>
	\$195.22

That plaintiffs in order to maintain their liens were compelled to pay state, county, school district and city taxes and interest and penalties and fees on delinquent taxes assessed upon said property

covered by the said mortgage heretofore described, as follows, to wit:

October 11, 1929, State and county taxes, school district taxes, interest and penalties and fees	28.46
October 14, 1929, City of Phoenix taxes	43.82
October 21, 1929, State, county and school district taxes	95.89
	\$168.17

And on the 11th day of October, 1929, to pay to the Superintendent of Streets, of the City of Phoenix, Three Hundred and Sixty-four and 94/100 (\$364.94) Dollars in order to redeem the said property, which had been sold to the City of Phoenix for nonpayment of principal and interest, advertising and penalty of assessment issued to represent the cost of improvements on Portland Street from the east line of Central Avenue to the west line of Seventh Street, on the said City, as by the receipts therefore, ready to be produced in court, and by copies of the same herewith filed and marked Exhibit "D," Exhibit "E," Exhibit "F," Exhibit "G," Exhibit "H," Exhibit "I," and Exhibit "J" and made a part of this complaint, will more fully appear; and that in addition to the sums mentioned in paragraph IV hereof there is due to the plaintiffs, from the defendants, the sum of Seven Hundred and Twenty-eight and 33/100 (\$728.33) Dollars, with interest thereon at the rate of six per cent per annum upon the several afore-

mentioned amounts from the date of [369] the payment thereof until paid.

VI.

That in the said note and mortgage it was expressly agreed that in case of the foreclosure of said note and mortgage by proceedings in court the said defendants, J. W. Bachowitz and Rose Bachowitz, his wife, agreed to pay ten per cent additional on the amount found due thereunder and plaintiffs claim that by the filing of this complaint under this clause in said note and mortgage there is now due to plaintiffs, for attorney's fees, Four Hundred and Ninety four and 68/100 (\$494.68) Dollars, in addition to the sums heretofore mentioned in paragraphs IV and V of this complaint.

VII.

That no other action has been brought to recover any part of the mortgage debt and that no part of the said mortgage debt has been collected.

VIII.

Plaintiffs further represent and charge that the said premises described in said mortgage are meager and scant security for the said sum of Four Thousand Seven Hundred (\$4,700.00) Dollars and interest mentioned in the said note, deed and mortgage and the other amounts due these plaintiffs.

IX.

That plaintiffs allege and state on information and belief that Victor Rodriquez, E. H. Wheat, Walter Dubree, Clinton Campbell, Luther Hill,

James A. Boyd, O. M. Moore, H. L. and A. J. Christian, Allison Steel Manufacturing Company, a corporation, Phoenix Builders' Supply Company, a corporation, C. P. Munger Rock Company, a corporation, Arizona Sash and Door Company, a corporation and John Doe and Jane Doe have or claim to have some interest in the said mortgaged premises, or some part thereof, as purchasers, mortgagees, judgment creditors, and/or liens for labor and materials, or otherwise, which [370] interest, or liens, if any, they have accrued subsequently to the lien of the said mortgage of the plaintiffs and the same are subject hereto: The plaintiffs, therefore, demand that the defendants and all persons claiming under them subsequent to the commencement of this action may be barred and foreclosed of all right, claim, lien and equity of redemption in said mortgaged premises, or any part thereof, that the said premises, or so much thereof as may be sufficient to raise the amount due to the plaintiffs for principal, interest and interest thereon, payment of taxes, interest, fees, penalties and assessments for improvements and interest thereon and costs, and which may be sold separately without material injury to the parties interested, may be decreed to be sold according to law; that out of the moneys arising from the sale thereof the plaintiffs may be paid the amounts due on the said promissory note and mortgage, with interest, at the rate of ten per cent per annum to the time of such payments, and for reimbursement for the taxes, interest, penalties and fees and assessments

for improvements with the legal rate of interest thereon from the date of the payment of the same to the time of such payment and for attorney's fees, costs and expenses of this action so far as the amount of such moneys properly applicable thereto will pay the same; and that the defendants, W. J. Bachowitz and Rose Bachowitz, his wife, may be adjudged to pay any deficiency which may remain after applying all of said moneys so applicable thereto; and that the plaintiffs may have such other relief, or both, in the premises as shall be just and equitable.

H. S. McCLUSKEY,
Attorney for Plaintiffs.

407 Ellis Building, Phoenix, Arizona.

SIDNEY P. OSBORN.

NERI OSBORN, Jr. [371]

State of Arizona,
County of Maricopa,—ss.

Sidney P. Osborn and Neri Osborn, Jr., being first duly sworn, each for himself, and not one for the other, deposes and says that he is the person mentioned in, and who subscribed to the foregoing complaint, as a plaintiff therein, that he has read the complaint and believes the contents thereof to be true of his own knowledge, except as to those matters and things stated upon information and belief, and as to those he believes it to be true.

SIDNEY P. OSBORN.
NERI OSBORN, Jr.

Subscribed and sworn to before me this 21 day of October, 1929.

[Seal]

H. S. McCLUSKEY,
Notary Public.

My commission expires Aug. 29, 1933. [372]

EXHIBIT "A."

Esc. 16179 J. B. M./W.

Phoenix, Arizona, February 1st, 1928.

\$4700.

On or before November 1st, 1928, for value received, we, or either of us promise to pay to J. W. Sullivan, or order, at —, the sum of Four Thousand Seven Hundred and No/100 Dollars, with interest thereon from February 1st, 1928 to maturity of this note, at the rate of seven per cent per annum, payable at maturity.

Should the interest as above not be paid when due, it shall thereafter bear interest at ten per cent per annum until paid.

Should the principal hereof not be paid in full at maturity, it shall thereafter bear interest at ten per cent per annum until paid. Principal and interest payable in lawful money of the United States of America.

Should suit be brought to recover on this note, we promise to pay as attorney's fees ten per cent additional on the amount found due hereunder.

This note is secured by a mortgage upon real property.

W. J. BACHOWITZ.
ROSE BACHOWITZ,
By Her Attorney-in-fact.

Prescott, July 24, 1928.

I am sending this note to my attorneys, Baker and Whitney, Phoenix by their request to be held by them for me pending a certain lien on my property.

J. W. SULLIVAN. [373]

EXHIBIT "B."

MORTGAGE.

KNOW ALL MEN, That W. J. Bachowetz and Rose Bachowetz, his wife, of Maricopa County, Arizona, hereinafter referred to as the Mortgagors, in consideration of Four Thousand Seven Hundred and No/100 Dollars, in hand paid by J. W. Sullivan hereinafter referred to as the Mortgagee the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey to the Mortgagee his heirs and assigns forever, the following real estate, lying and being in the County of Maricopa, State of Arizona, known and described as

Lot 2, Block 6, East Evergreen, an Addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 3 of Maps, page 55 thereof;

TO HAVE AND TO HOLD the above described premises together with all the privileges and appurtenances thereunto belonging unto the mortgagee, his heirs, executors, administrators or assigns forever. And the mortgagors hereby covenant that they are well and truly seized of a good and perfect title to the premises above conveyed in the law, in fee simple, and have good right and lawful authority

to convey the same, and that the title so conveyed is clear, free and unincumbered and that they will forever warrant and defend the same to the mortgagee against all claims whatsoever.

PROVIDED ALWAYS, and these presents are upon this express condition that if the mortgagors shall pay to the mortgagee the just and full sum of Four Thousand Seven Hundred and No/100 Dollars, with interest thereon, according to the terms and conditions of one certain promissory note bearing even date herewith, due on or before November 1st, 1928, with interest thereon at 7% per annum, payable at maturity, and made and [374] executed by Mortgagors herein and payable to the order of the mortgagee and shall moreover pay to the proper officers all taxes and assessments, general or special, which shall be levied or assessed upon said real estate on or before the date when such taxes or assessments shall have become delinquent, and insure and keep insured the buildings on said premises against loss or damage by fire, in the sum of Dollars in insurance companies to be selected by the mortgagee, and the policies of insurance assigned or made payable to the said mortgagee, as interests may appear, until payment in full of said promissory note, and interest thereon, then these presents shall be null and void. In case of the non-payment of any sum of money (either of principal, interest or taxes) at the time or times when the same shall become due, or failure to insure said buildings according to the conditions of these presents, then the mortgagee may pay same and add the

amount so paid to the sum secured by this mortgage and in any such case, or in case of the failure on the part of the mortgagors to keep or perform any other agreement, stipulation or condition herein contained, or contained in the note above described, the whole amount of the said principal sum shall at the option of the mortgagee be deemed to have become due, and the same with interest thereon at the rate of ten (10) per cent per annum from the date of exercising said option, shall thereupon be collectible in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure shall occur as aforesaid.

And the mortgagors do further covenant and agree to keep the mortgaged property in good condition and not to permit any waste or deterioration thereof, and in case complaint is filed for a foreclosure of this mortgage, the mortgagee shall [375] be entitled to the appointment of a Receiver without bond to take possession of the mortgaged premises and collect the rents and profits thereof pending foreclosure proceedings and up to the time of redemption or issuance of sheriff's deed, and in case of such foreclosure the mortgagors will pay to the mortgagee in addition to the taxable costs of the foreclosure suit ten per cent (10%) as attorney's fees, on the amount found due, together with a reasonable fee for title search made in preparation and conduct of such suit, which shall be a lien on said premises and secured by this mortgage, and in case of settlement after suit is brought, but before trial,

the mortgagors agree to pay one-half of the above attorney's fees as well as all payments that the mortgagee may be obliged to make for his security.

The covenants herein contained shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, The mortgagors have hereunto set their hands this 1st day of February, A. D. 1928.

By W. J. BACHOWETZ. (Seal)

ROSE BACHOWETZ. (Seal)

By W. J. BACHOWETZ. (Seal)

Attorney-in-fact. (Seal)

Signed and sealed in presence of

State of Arizona,
County of Maricopa,—ss.

Before me, J. J. Barkley, a Notary Public in and for the County of Maricopa, State of Arizona, on this day personally appeared W. J. Bachowetz, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this 1st day of February, A. D. 1928.

[Seal]

J. J. BARKLEY,
Notary Public.

My commission expires July 14, 1930. [376]

State of Arizona,
County of Maricopa,—ss.

Before me, J. J. Barkley, a Notary Public in and for said County, State of Arizona, on this day personally appeared W. J. Bachowetz known to me to be the person whose name is subscribed to the foregoing instrument as the Attorney in Fact of Rose Bachowetz, and acknowledged to me that he subscribed the name of the said Rose Bachowetz thereto as principal and his own name of Attorney in Fact, and as such Attorney in Fact he executed said instrument for the purpose and consideration therein expressed.

Witness my hand and seal of office this 1st day of Feburary, A. D. 1928.

[Seal]

J. J. BARKLEY,
Notary Public.

My commission expires July 14, 1930.

Filed and recorded at request of J. W. Sullivan, Feb. 4, 1928, at 9:09 A. M.

W. H. LINVILLE,
County Recorder.
By Addie F. Mauzy,
Deputy.

#3663.

State of Arizona,
County of Maricopa,—ss.

I, J. K. Ward, County Recorder in and for the County and State aforesaid, hereby certify that I have compared the foregoing copy with the record

of mortgage from W. J. Bachowetz and Rose Bachowetz, his wife, to J. W. Sullivan, filed and recorded in my office on the 4th day of February, 1928, in Book No. 209 of Mortgages at Pages 255-256, and that the same is a full, true and correct copy of such record and of the whole thereof.

Witness my hand and seal of office, this 21st day of October, A. D. 1929.

[Seal]

J. K. WARD,
County Recorder.
By Roger G. Laveen,
Deputy. [377]

EXHIBIT "C."

ASSIGNMENT OF MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS:
That J. W. Sullivan, of Prescott, Arizona, the party of the first part, for and in consideration of the sum of Ten Dollars to him in hand paid by Sidney P. Osborn and Neri Osborn, Jr., the parties of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, assign, transfer and set over unto the said parties of the second part, a certain Indenture of Mortgage bearing date the First day of February, one thousand nine hundred twenty-eight, made and executed by W. J. Bachowitz and Rose Bachowitz, his wife, to J. W. Sullivan, which said mortgage was recorded on the 4th day of February, 1928, in Book 209 of Mortgages, pages 255-256, in the office of the County Recorder of Maricopa County, Arizona.

Together with the note therein described, and the money due and to become due thereon, with the interest.

And the said party of the first part does hereby make, constitute and appoint the said parties of the second part his true and lawful attorney, irrevocable, in his name, or otherwise, but at the proper costs and charges of the said parties of the second part, to have, use and take all the lawful ways and means for the recovery of the said money and interest; and in case of a payment to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

IN WITNESS WHEREOF, said party of the first part has hereunto set his hand this 8 day of October, A. D. 1929.

J. W. SULLIVAN,

Signed and delivered in the presence of

H. R. WOOD. [378]

EXHIBIT "D."

No. 17729

33

RECEIPT FOR TAXES FOR THE YEAR 1928.

Maricopa County, Arizona.

First Installment

(Due Sept. 3, 1928.

(Delinquent Nov. 5, 1928.

Second Installment

(Due March 4, 1929.

(Delinquent May 6, 1929.

Compare at once with description of your property and see that it is correct.

476 *Standard Sanitary Manufacturing Company*

Assessed to J. W. Sullivan, Phoenix, Arizona. Nov. 5, 1928. In payment as shown of taxes for the year 1928 levied against the property described here on, as indicated by the assessment rolls of Maricopa County.

Description	Lot or sec.	Block or acres	Valuations Real Estate	State and County Property Tax
E. Evergreen	2	6	145	32.40

School Bond Tax
Dist. No. 1
19.53

Total Tax
\$51.93

Delinquent Tax
\$25.96

Paid

JOHN D. CALHOUN,

(Paid Stamp)

County Treas.

By R. E.

Paid by

RUTH EDWARDS.

J. W. SULLIVAN. [379]

EXHIBIT "E."

Office of City Assessor and Ex-Officio City Collector of the City of Phoenix, Maricopa County, Arizona.

Phoenix, Arizona, 10/14/29.
No. 208.

The City Tax for the fiscal year 1928-1929, on the following-described property, the same being assessed to W. J. & Rose Bachowitz, is as follows:
E. Evergreen, Lot 2, Block 6, Real Est. Tax

Valuations 1930	\$30.49
1st Inst. 15.25 & Pen. 2.28 paid 3/15/29 Rec. 24248.	
2nd Inst. 15.24	paid 3/15/39 Rec. 7112.

LANNAS S. HENDERSON,

City Assessor and *Ex-officio* City Collector.

B. [380]

EXHIBIT "F."

This is to certify that the interest due June 1st, 1928, in the amount of \$13.43 and interest and principal due Dec. 1, 1928, in the amount of \$125.34 was paid at this office by J. W. Sullivan, on Lot 2, Block 6, East Evergreen Addition to the City of Phoenix, Series #3, Assm. 26.

Signed _____,
Superintendent of Streets.
By M. B. HARTLINE. [381]

EXHIBIT "G."

No. 5531.

RECEIPT FOR THE YEAR '28.

Maricopa County, Arizona.

Assessed to J. W. Sullivan, Phoenix, Arizona, October 11, 1929, in payment as shown of taxes levied against property described hereon, as indicated by the assessment-rolls of Maricopa County.

Description	Lot	Block	Valuations	State and	Schl. Tax Dist. No. 1	Total Tax
			Real Estate	County Prop. Tax		
East Evergreen	2	6	1415	22.40	19.53	51.93

JOHN B. CALHOUN,
Tax Collector.

By GORDON OSBORN,
Deputy.

Paid by SIDNEY P. OSBORN
210 First Natl. Bk.,
Phoenix, Arizona.

October 11, 1929.

Second Installment.

EXHIBIT "I."

No. 665

Vol. 2

STATE AND COUNTY TAX RECEIPT—1929.

Maricopa County, Arizona.

JOHN D. CALHOUN,

County Treasurer and Ex-officio Tax Collector.

Paid by SIDNEY P. OSBORN,

210 First Natl. Bk. Bldg.

Description	Lot	Block	Valua-	State & Co.		Schl.	Total
			tions	Property	Bond Tax	Tax	
			Rl. Est.	Imp.	Tax	Dist. No. 1	Tax
E. Evergreen	2	6	1555	3000	128.91	62.86	191.77
					<u>First Installment</u>	<u>Second Installment</u>	
				95.89		95.88	

Assessed to

W. J. & ROSE BACHOWITZ.

Paid by

SIDNEY P. OSBORN.

(Paid Stamp of)

(John D. Calhoun)

(County Treas.)

(dated Oct. 21, 1929) [384]

“EXHIBIT “J.”

No. 200.

CERTIFICATE OF SALE OF PROPERTY.

Sold for the non-payment of Principal and Interest, Advertising and Penalty of Assessment issued to represent the cost of improvement of PORTLAND STREET from the East line of Central Avenue to the West line of Seventh Street in the City of Phoenix, County of Maricopa, State of Arizona, Bond Series No. 3.

This instrument is to certify that on the 31st day of August, 1929, at the hour of 10:04 A. M., of said day, under and by virtue of the authority vested in me by Chapter 144 of the Session Laws of the State of Arizona of 1919, and amendments thereto, relating to the sale of property for non-payment either of the principal or of the interest, penalty, advertising or cost accruing account of the assessments for the improvement of streets, I. B. E. GILPIN, as Deputy Superintendent of Streets of the City of Phoenix, sold to City of Phoenix the following described lot, piece or parcel of land, situate, lying and being in the City of Phoenix, County of Maricopa, State of Arizona, and more particularly described as follows, to-wit: Lot 2, Block 6, East Evergreen, for the sum of three hundred forty-seven and 56/100 (\$347.56) Dollars, which said amount was paid by the said City of Phoenix for said property.

That the said City of Phoenix was the one who was willing to take the least quantity of said lot,

piece or parcel of land at said sale and pay amount due and unpaid upon that certain Assessment No. 26 Bond Series No. 3, issued to represent the assessment upon Lot 2, Block 6, East Evergreen for the improvement of PORTLAND STREET from the East line of Central Avenue to the West line of Seventh Street together with costs; the name of the owner of the property so sold, as given on the record of the assessment is unknown.

That the property herein described was sold by me for the said sum of three hundred forty-seven and 56/100 (347.56) Dollars, that sum being the total amount of the principal and interest together with penalty, advertising and cost due and unpaid upon the said assessment, together with costs, and the items of which are as follows, to-wit:

Amount of unpaid principal of Assessment.	\$335.74
Amount of unpaid interest on Assessment..	10.07
Penalty .....	.50
Advertising	1.25
Certificate of Sale.....	
Costs	

\$347.56

The above-named purchaser will be entitled to a deed for the above described property on the 21st day of August, 1930, upon giving notice and application therefor as provided by Chapter 144 of the Session Law of the State of Arizona of 1919, and amendments thereto, unless sooner redeemed, according to said Act.

Dated and filed in the office of the Superintendent of Streets of the City of Phoenix, this 31st

day of August, 1929, the same being the date of the sale.

B. E. GILPIN,
Deputy Superintendent of Streets.

Release on redemption in full dated October 11th, 1929, by Sidney P. Osborn for the sum of \$364.94.

W. J. JAMIESON,
Superintendent of Streets. [385]

B.-522.

PETITIONERS' EXHIBIT No. 23.

In Evidence.

12-3-29.

In the Superior Court of the County of Maricopa,
State of Arizona.

No. 31031-C.

SIDNEY P. OSBORN and NERI OSBORN, Jr.,
Plaintiffs,

vs.

W. J. BACHOWETZ and ROSE BACHOWETZ,
His Wife; VICTOR F. RODRIGUEZ; E.
H. WHEAT; PHOENIX BUILDERS'
SUPPLY COMPANY, a Corporation;
ALLISON STEEL MANUFACTURING
COMPANY, a Corporation; CLINTON
CAMPBELL Personally, and as Trustee,
and LENA CAMPBELL, His Wife; C. P.
MUNGER ROCK COMPANY, a Corpora-
tion; WALTER DUBREE; H. L. CHRIS-

TIAN; A. J. CHRISTIAN; D. L. FRANCIS, LYON FRANCIS and LEO FRANCIS, Doing Business Under the Firm Name and Style of PHOENIX PLUMBING AND HEATING COMPANY; LUTHER HILL; JAMES A. BOYD; O. M. MOORE; ARIZONA SASH-DOOR & GLASS COMPANY, a Corporation; WALTER J. THALHEIMER, Receiver for Phoenix Plumbing and Heating Company,

Defendants.

AMENDED COMPLAINT.

Come now the plaintiffs by their attorneys and for cause of action against defendants complain and allege:

I.

That the plaintiffs and each of them are residents of Maricopa County, Arizona; that the defendants W. J. Bachowetz and Rose Bachowetz, his wife, Victor F. Rodriquez, E. H. Wheat, Walter Dubree, Clinton Campbell and Lena Campbell, his wife, O. M. Moore, H. L. Christian and A. J. Christian, are each and all, plaintiffs are informed and believe, residents of Maricopa County, Arizona; that the defendants C. P. Munger Rock Company, Arizona Sash-Door & Glass Company, Allison Steel Manufacturing Company and Phoenix Builders' Supply Company, are corporations organized and existing under and by virtue of the laws of the [386] State of Arizona, and doing Business in Maricopa County therein; that the de-

defendants Luther Hill and James A. Boyd, plaintiffs are informed and believe, are each of them non-residents of the State of Arizona, and the place of residence of each of said defendants is unknown to these plaintiffs; that the defendants D. L. Francis, Lyon Francis and Leo Francis, doing business under the name and style of Phoenix Plumbing and Heating Company, plaintiffs are informed and believe, are residents of Maricopa County, Arizona; that Walter J. Thalheimer, Receiver for Phoenix Plumbing and Heating Company, is a resident of Maricopa County, Arizona.

II.

That on or about the 1st day of February, 1928, at Phoenix, Maricopa County, Arizona, the defendants W. J. Bachowetz and Rose Bachowetz, his wife, made, executed and delivered to J. W. Sullivan in said Phoenix, Maricopa County, Arizona, their promissory note in writing for the sum of Forty-seven Hundred (\$4700.00) Dollars, with interest and attorneys' fees as therein provided, which said note is in words and figures as follows, to wit:

\$4700.00.

Esc. 16179 J. B. M./W.

Phoenix, Arizona, February 1st, 1928.

On or before November 1st, 1928, for value received, we, or either of us promise to pay to J. W. Sullivan, or order, at ——— the sum of Four Thousand Seven Hundred and no/100 Dollars, with interest thereon from February 1st, 1928, to maturity of this note, at the rate of seven per cent per annum, payable at maturity.

Should the interest as above not be paid when due, it shall thereafter bear interest at ten per cent per annum until paid.

Should the principal hereof not be paid in full at maturity, it shall thereafter bear interest at ten per cent per annum until paid. Principal and interest payable in lawful money of the United States of America.

Should suit be brought to recover on this note, we promise to pay as attorney's fees ten per cent additional on the amount found due hereunder.

This note is secured by a mortgage upon real property.

W. J. BACHOWETZ,

ROSE BACHOWETZ,

By Her Attorney-in-fact. [387]

That said note contains the following writing on the back thereof:

Prescott, July 24, 1928.

I am sending this note to my attorneys, Baker and Whitney, Phoenix, by their request to be held by them for me pending a certain lien on my property.

J. W. SULLIVAN.

III.

That in order to secure the payment of the principal sum of said promissory note the interest thereon and attorneys' fees as therein mentioned and provided said defendants W. J. Bachowetz and Rose Bachowetz, his wife, did execute and deliver to said J. W. Sullivan at Phoenix, Maricopa County, Arizona, their certain real estate mort-

gage bearing date the 1st day of February, 1928, which said mortgage is in words and figures as follows, to wit: [388]

“MORTGAGE.

“KNOW ALL MEN, That W. J. Bachowetz and Rose Bachowetz, his wife, of Maricopa County, Arizona, hereinafter referred to as the Mortgagors, in consideration of Four Thousand Seven Hundred and No/100 Dollars, in hand paid by J. W. Sullivan hereinafter referred to as the Mortgagee the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey to the Mortgagee his heirs and assigns forever, the following real estate, lying and being in the County of Maricopa, State of Arizona, known and described as

“Lot 2, Block 6, East Evergreen, an Addition to the City of Phoenix, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Block 3 of Maps, page 55 thereof;

“TO HAVE AND TO HOLD the above described premises together with all the privileges and appurtenances thereunto belonging unto the mortgagee, his heirs, executors, administrators or assigns forever. And the mortgagors hereby covenant that they are well and truly seized of a good and perfect title to the premises above conveyed in the law, in fee simple, and have good right and lawful authority to convey the same, and that the title so conveyed is clear, free and unincumbered and that they will forever warrant and defend the

same to the mortgagee against all claims whatsoever.

“PROVIDED ALWAYS, and these presents are upon this express condition, that if the mortgagors shall pay to the mortgagee the just and full sum of Four Thousand Seven Hundred and No/100 Dollars, with interest thereon, according to the terms and conditions of one certain promissory note bearing even date herewith, due on or before November 1st, 1928, with interest thereon at 7% per annum, payable at maturity, and made and executed by Mortgagors herein and payable to the order of the mortgagee and shall moreover pay to the proper officers all taxes and assessments, general or special, which shall be levied or assessed upon said real estate on or before the date when such taxes or assessments shall have become delinquent, and insure and keep insured the buildings on said premises against loss or damage by fire, in the sum of Dollars in insurance companies to be selected by the mortgagee, and the policies of insurance assigned or made payable to the said mortgagee, as interests may appear, until payment in full of said promissory note, and interest thereon, then these presents shall be null and void. In case of the non-payment of any sum of money (either principal, interest or taxes) at the time or times when the same shall become due, or failure to insure said buildings according to the conditions of these presents, then the mortgagee may pay same and add the amount so paid to the sum secured, by this mortgage and in any such case, or in case of the failure on the part of the mortgagors to keep or

perform any other agreement, stipulation or condition herein contained or contained in the note above described, the whole amount of the said principal sum shall at the option of the mortgagee be deemed to have become due, and the same with interest thereon at the rate of ten (10) per cent per annum from the date of exercising said option, shall thereupon be collectible in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure shall occur as aforesaid.

“And the mortgagors do further covenant and agree to keep the mortgaged property in good condition and not to permit any [389] waste or deterioration thereof, and in case complaint is filed for a foreclosure of this mortgage, the mortgagee shall be entitled to the appointment of a Receiver without bond to take possession of the mortgaged premises and collect the rents and profits thereof pending foreclosure proceedings and up to the time of redemption or issuance of sheriff’s deed, and in case of such foreclosure the mortgagors will pay to the mortgagee in addition to the taxable costs of the foreclosure suit ten per cent (10%) as attorney’s fees, on the amount found due, together with a reasonable fee for title search made in preparation and conduct of such suit, which shall be a lien on said premises and secured by this mortgage, and in case of settlement after suit is brought, but before trial, the mortgagors agree to pay one-half of the above attorney’s fees as well as all pay-

ments that the mortgagee may be obliged to make for his security.

“The covenants herein contained shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

“IN WITNESS WHEREOF, the mortgagors have hereunto set their hands this 1st day of February, A. D. 1928.

“W. J. BACHOWETZ. (Seal)

“ROSE BACHOWETZ. (Seal)

“By W. J. BACHOWETZ, (Seal)

“Attorney-in-fact. (Seal)

“State of Arizona,

“County of Maricopa,—ss.

“Before me, J. J. Barkley, a Notary Public in and for the County of Maricopa, State of Arizona, on this day personally appeared W. J. Bachowetz known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

“Given under my hand and seal of office this 1st day of February, A. D. 1928.

“[Seal]

J. J. BARKLEY.

“My commission expires July 14, 1930.

“State of Arizona,

“County of Maricopa,—ss.

“Before me, J. J. Barkley, a Notary Public in and for said County, State of Arizona, on this day personally appeared W. J. Bachowetz known

to me to be the person whose name is subscribed to the foregoing instrument as the Attorney in Fact of Rose Bachowetz, and acknowledged to me that he subscribed the name of the said Rose Bachowetz thereto as principal and his own name of Attorney in Fact, and as such Attorney in Fact he executed said instrument for the purpose and consideration therein expressed.

“Witness my hand and seal of office this 1st day of February, A. D. 1928.

“[Seal]

J. J. BARKLEY,

“Notary Public.

“My commission expires July 14, 1930.” [390]

and which said mortgage was duly acknowledged and certified so as to entitle it to be recorded and the same was on, to wit, the 4th day of February, 1928, at 9:00 o'clock A. M. of said day duly recorded in the County Recorder's office of Maricopa County, Arizona, in Book 209 of Mortgages, at pages 255-256 thereof.

IV.

That thereafter, to wit, and on or about the 8th day of October, 1929, said J. W. Sullivan for value received did sell, assign and transfer said note mentioned in paragraph II of this amended complaint, and sis assign the mortgage described in paragraph III of this amended complaint, to the plaintiffs, Sidney P. Osborn and Neri Osborn, Jr., which said assignment of mortgage was duly acknowledged and certified so as to entitle it to be recorded, and the same was on, to wit, the 9th day of October, 1929, at 11:27 o'clock A. M. of said day,

duly recorded in the County Recorder's Office of Maricopa County, Arizona, in Book 16, of Assignments, at page 175 thereof; that plaintiffs are now the owners and holders of the note and mortgage hereinbefore in this amended complaint described.

V.

That there was on the 1st day of November, 1928, due and owing to the plaintiffs from the defendants, W. J. Bachowetz and Rose Backowetz, his wife, the sum of Four Thousand Nine Hundred Forty-nine and 69/100 (\$4,949.69) Dollars, being principal and interest on said promissory note and mortgage according to the terms and conditions thereof to said November 1, 1928, and that no part of said sum has been paid by the said defendants, W. J. Backowetz and Rose Bachowetz, his wife, nor by any one else, though often demanded.

VI.

That by the terms of said note and mortgage it was further agreed and provided in substance that in the case of the non-payment of any sum of money, either of principal, interest [391] or taxes, at the time or times when the same shall become due that the mortgagee may pay same and add the amount so paid to the sum secured by the mortgage herein described, and that the same shall bear interest in accordance with the terms of said mortgage; and it is further provided in said mortgage that the mortgagors will pay all costs including the attorney's fees therein provided *form* enforcing the provisions of and foreclosing said mortgage, and

the reasonable fees and costs for a title search, and all other costs, expenses, and taxes that might be necessary to be paid by the mortgagee to protect his security.

VII.

That the plaintiffs were compelled to pay city, county and state taxes and assessments on the property herein described, in the sum of Three Hundred Sixty-three and $39/100$ (\$363.39) Dollars, in order to protect their security; that on the 11th day of October, 1929, plaintiffs in order to protect their security were also required to pay to the Superintendent of Streets of the City of Phoenix the sum of Three Hundred Sixty-four and $94/100$ (\$364.94) Dollars in order to redeem the property, herein described and described in said mortgage, from a sale made of said property by the Superintendent of Streets of the City of Phoenix on the 31st day of August, 1929; that the plaintiffs were compelled to incur an expense of Twenty (\$20.00) Dollars for a title search to the above described premises, for the purpose of foreclosure, which defendants have failed to pay; that the plaintiffs have been compelled to employ attorneys to collect the note herein set forth, and to foreclose the mortgage herein described, and have agreed to pay said attorneys a sum equal to ten per cent of the amount found due under said mortgage as provided in said note and mortgage, which sum amounts to Six Hundred (\$600.00) Dollars; that there is now due to [392] these plaintiffs upon said note and mortgage as of November 1, 1928, the following sums, principal

and interest, on said promissory note and mortgage to November 1, 1928, Four Thousand Nine Hundred Forty-nine and 69/100 (\$4,949.69) Dollars; city, county and state taxes and assessments paid by plaintiffs, Three Hundred Sixty-three and 39/100 (\$363.39) Dollars; amount paid Superintendent of Streets to redeem said property from sale Three Hundred Sixty-four and 94/100 (\$364.94) Dollars; title search of said property Twenty (\$20.00) Dollars; attorney's fees Six Hundred (\$600.00) Dollars.

VIII.

That the record title to said premises as of the 20th day of November, 1929, appears in Clinton Campbell, Trustee, husband of Lena Campbell.

IX.

That the defendants, W. J. Bachowetz and Rose Bachowetz, his wife, Victor F. Rodriquez, E. H. Wheat, Walter Dubree, Clinton Campbell and Lena Campbell, his wife, O. M. Moore, H. L. Christian, and A. J. Christian, C. P. Munger Rock Company, Arizona Sash-Door & Glass Company, Allison Steel Manufacturing Company, Phoenix Builders' Supply Company, Luther Hill, James Boyd; D. L. Francis, Lyon Francis and Leo Francis, doing business under the name and style of Phoenix Plumbing and Heating Company; Walter J. Thalheimer, Receiver for Phoenix Plumbing and Heating Company, have or claim to have some interest in the property described herein and described in said mortgage herein set forth as judgment creditors,

lienholders, encumbrancers, or otherwise, but said claim or claims is and are subsequent and inferior to the mortgage herein described and sought to be foreclosed by these plaintiffs.

WHEREFORE, plaintiffs pray judgment against W. J. Bachowetz and Rose Bachowetz, his wife:
[393]

1. For the sum of Four Thousand Nine Hundred Forty-nine and 69/100 (\$4,949.69) Dollars, together with interest thereon at the rate of ten (10%) per cent per annum as provided in said promissory note from November 1, 1928, until paid, together with the further sum of Twenty (\$20.00) Dollars on account of title search made for the purpose of foreclosing this mortgage with interest thereon at the rate of six (6%) per cent per annum from date of judgment until paid; together with the further sum of Six Hundred (\$600.00) Dollars, attorney's fees with interest thereon at the rate of six (6%) per cent per annum from date of Judgment until paid; together with a further sum sufficient to pay all taxes and assessments due, or paid, with interest, penalties and costs; together with the further sum of Three Hundred Sixty-four and 94/100 (\$364.94) Dollars, paid by plaintiffs to redeem said property from a sale made by the Superintendent of Streets of the City of Phoenix, with interest thereon at the rate of six (6%) per cent per annum from Judgment until paid.

2. For plaintiffs' costs and disbursements herein.

3. That the usual decree may be made for the sale of said premises by the sheriff of Maricopa

County, Arizona, according to law, and according to the practice of this court; and that the proceeds of said sale may be applied to the payment of the amounts due to plaintiff as aforesaid; and that the defendants, W. J. Bachowetz and Rose Bachowetz, his wife, Victor F. Rodriquez, E. H. Wheat, Walter

Dubree, Clinton Campbell and Lena Campbell, his wife, O. M. Moore, H. L. Christian and A. J. Christian, C. P. Munger Rock Company, Arizona Sash-Door & Glass Company, Allison Steel Manufacturing Company, Phoenix Builders' Supply Company, Luther Hill, James Boyd; D. L. Francis, Lyon Francis and Leo Francis, doing business under the name and style of Phoenix Plumbing and Heating Company; Walter J. Thalheimer, [394] Receiver for Phoenix Plumbing and Heating Company, and all persons claiming by, through or under them, or either of them, subsequent to the execution of said mortgage upon said premises either as purchasers, judgment creditors, lien holders or otherwise, may be barred and forever foreclosed of all rights, claims or equity of redemption in the said premises and every part and parcel thereof.

4. That the plaintiffs or any other party to this suit may become a purchaser at said sale, and that upon the expiration of the time allowed by law for the redemption of the premises from such sale the sheriff execute a deed to the purchaser and that the purchaser be let into the possession of the said premises upon the production of the sheriff's deed therefor;

5. That if there is any deficiency after the sale

(Testimony of Jerrie Lee.)

of said property that the plaintiff have execution against the defendants, W. J. Bachowetz and Rose Bachowetz, his wife, for same.

6. That the plaintiffs may have such other and further relief in the premises as to this Court may seem meet and equitable; and that plaintiffs have general relief.

H. S. McCLUSKEY,
Attorney for Plaintiffs.

BAKER & WHITNEY,

Of Counsel. [395]

TESTIMONY OF JERRIE LEE, FOR PETITIONING CREDITORS (RECALLED).

(Examination by Miss BIRDSALL.)

There is a loan account to Marie & Joe Francis, referring to (Petitioners' Exhibit No. 1 for Identification, No. 7 in evidence) it is marked loan account, Marie and Joe Francis, dated from May 1 to May 16 and reads as follows:

May 1	rebate check #2538	....\$ 150.00
May 2	rebate check #2551	.... 80.00
May 4	rebate check #2557	.... 20.00
May 6	rebate check #2590	.... 30.00
May 16	check retd.	1087.32
June 5,	cash	160.00
Credit side		
Loan	April 30	1087.32
Loan	May 10	500.00

(Testimony of Jerrie Lee.)

Q. Have you any record of the cancelled checks or stubs giving any further light on that account?

A. I think there are some in those records introduced this morning.

Q. Can you find them right now?

A. I think so. (Witness examines book.)

A. Check No. 2538, amount \$150, May 1, 1929, payable to Marie Francis, repayment of loan. No. 2551, dated May 3, amount \$80, payable to Joe Francis, repayment of loan in the name of Marie Francis. No. 2557, dated May 4, 1929, \$20, payable to Joe Francis, repayment of loan in name of Marie Francis; Check No. 2590, dated May 6, 1929, \$30 payable to Joe Francis repayment of loan to Marie Francis; there is no record of check returned or for cash payments, unless it is in the cash book.

Q. Referring to Petitioners' Exhibit No. 6 for Identification, No. 7 in evidence, will you look at that?

A. On page 6, line 20, on the credit side. The bookkeeper has taken credit for check returned for insufficient funds, [396] \$1,087.32, made by Joe Francis; page 17, line 23, same book, June 5, Joe Francis paid to D. Francis, cash, \$160 charged to Joe Francis loan account; that is all the record I have.

Q. Is there any record on the cash book showing whether that went through the bank book? The \$500 loan and the \$500 payment?

A. Page 4, line 29, same book, there is an entry. Received from Joe Francis, \$500 and entered in the general ledger loan account.

(Testimony of Jerrie Lee.)

Q. I think you testified the other day in regard to the check for \$1,100 in evidence, Petitioners' Exhibit No. 11, payable to M. Carom & Sons, dated March 15, 1929, that there is nowhere in the books of the company a record of that account or that check other than the check stub and the check itself; is that correct? A. Yes, that is correct.

Q. There is no record even on the cash book as I take it, as it was prior to the date of the cash book No. 6 for identification, No. 7 in evidence?

A. There is nothing on there; that is prior to that date.

Q. Referring to the books of the Phoenix Plumbing & Heating Company which have been introduced in evidence, can you find anywhere an account of Paul Gehres with the Phoenix Plumbing & Heating Company?

(Witness examines book.)

A. The only account I have located is in Petitioners' Exhibit No. 2 for Identification here, No. 7 in Evidence, accounts payable. There is an account of Paul E. Gehres, employee, which shows that various charges have been made, apparently for goods he had been buying through the company in the amount of \$85.53, and the amount had been paid in three different items, so the account is in balance. [397]

Q. Can you tell the year? A. No.

Q. Is there any indication by check number which would indicate the year?

A. We have no cash book with those numbers, but

(Testimony of Jerrie Lee.)

the notation "C. B." would indicate that it was a cash book entry.

Q. Is there any other account with Paul Gehres, so far as the books are concerned?

A. No. The only information we could get would be the cancelled checks or check stubs; I haven't looked at the time book.

Q. Will you examine Petitioner's Exhibit No. 4, which is the time book, and see if Mr. Gehres' salary was carried on that?

(Witness examines Petitioners' Exhibit No. 4 for Identification, No. 7 in Evidence.) [398]

A. Here is one,—January 12, 1929.

Q. Indicating the date they started, and the amount?

A. That was for the period of January 1 to 15th at \$175 a month, or \$87.50.

Q. How long did those payments at that rate continue?

A. The next is February 2, 1929, paying for the period January 15th to February 1st, same rate; next, February 1st to 16th, same rate, \$77.50; next is March 2nd; the last item appearing on the pay-roll was up to May 15th, 1929, at the same rate.

Q. From your examination of the books did you find any record of the stubs showing any other payment to Mr. Behres?

A. The only one I recall was a \$1,200 item marked repayment of loan.

Q. Can you find that on the check stubs?

A. Yes,—Check No. 1925, November 20, 1928, for

(Testimony of Jerrie Lee.)

the sum of \$1,200, repayment of loan to fix overdraft, payable to P. E. Gehres.

Q. You have no record on the books anywhere of loan having been made by Gehres to the Phoenix Plumbing & Heating Company? A. No.

I found no record of Calloway loan or payment, nor of Westward Ho material. (Referring to Pet. Ex. 5 for Identification, No. 7 in Evidence.) The initial capital of company is entry of \$2,100 in cash book, October 1, 1927. October 4, 1927, Remsbottom was paid \$1,600 in two payments of \$100 and \$1,500. There is no record of any balance shown due Remsbottom. There is no record of any account due Thomas at any time subsequent to start of business. If Joe Thomas put in money at start of business it would probably show in cash book. There is no record prior to explosion of a Thomas account. Prior to explosion the only record is a check of \$712.00 referred to above. July 30, 1928, [399] which is Pet. Ex. No. 19 in evidence.

The bank book (Petitioners' Exhibit No. 14 in Evidence) shows deposit \$2,150, September 26, 1927, October 22, note for \$200 was deposited. The \$200 note appears on page 22 in cash book. (Petitioners' Exhibit No. 5 for Identification, No. 7 in Evidence.) The bank is debited with it and credited under "personal account."

Q. From your examination of the books and records of the Phoenix Plumbing & Heating Company, assuming the original capital was \$2,100, or \$2,150, as shown by the bank books and the original cash book, can you testify or does it show from the books

(Testimony of Jerrie Lee.)

where that capital has been increased by any other funds other than profits?

A. The records do not disclose where any other funds came from.

Q. Did they disclose any other funds coming in there to increase the capital account? A. No.

Q. Then can you from your examination of the books and records testify as to the capital having been increased by any profits?

A. They are not kept in a manner to reflect a profit and loss account.

Q. Can you take any of the records of the company and show a contract or an item of any sort upon which the Phoenix Plumbing & Heating Company has made a profit as shown by the books?

A. Not as shown by the books.

Referring to Pet. Ex. 3 for Identification, No. 7 in Evidence, Lincoln Mortgage Company transaction, there are no notations of assignments to anyone. [400]

Q. Will you refer to the records of the Phoenix Plumbing & Heating Company subsequent to April 22, 1929, the date of the explosion, and see if you can find a payment to the Plumbing Company of amounts from the Lincoln Mortgage Company.

A. You mean from the contracts receivable ledger or the other cash book?

Q. Are they shown on the contracts receivable ledger? A. There are some.

Q. I am referring particularly to the payment in the early part of June, 1929.

A. That does not appear; that appears in the

(Testimony of Jerrie Lee.)

cash book. Here is Petitioners' Exhibit No. 6 for Identification, No. 7 in Evidence, page 19, line 10, \$13,000, in contracts receivable, and it is charged to accounts payable, Standard Sanitary Manufacturing Company.

Q. What date is that? A. June 10, 1929.

Q. Is there any other record?

A. On the same page 19, line 9, Lincoln Mortgage Company, \$1,000 credited to contracts receivable, debited to bank.

Referring to contracts receivable account (Petitioners' Exhibit No. 3 for Identification, No. 7 in Evidence) on Phoenix Junior College job, the book shows notation as follows: "Balance assigned to Standard Sanitary Manufacturing Company May 7, 1929," and the same book shows the Library Building job assigned to the same company May 7, 1929, and also the same notation of assignment on Central Heating Plant. There was no notation of assignment on E. J. Bennett job, Harry Tritle job, O. P. Johnson job, Schwentker job, Marana Teacherage Building job, Campbell job, Barnes job or two Bell jobs. [401]

Payments to the Crane Company in four months prior to August 17, 1929, are as follows: (Reading from Petitioners' Exhibit No. 1 for Identification, No. 7 in Evidence.) Check No. 2608 \$1,000 May 8, 1929. Petitioners' Exhibit No. 6 for Identification, No. 7 in Evidence, shows check 2869 for \$500 paid to Crane Company June 21, 1929. If other payments were made to Crane Co. in that period they are not posted in accounts payable ledger. Page 21

(Testimony of Jerrie Lee.)

of the same book shows five payments to Standard Sanitary Company during the four months ending August 17, 1929, but the Standard Sanitary Company statement of which I have a copy in my hand reads for the same period as follows:

April 30, 1929, check #2536	\$ 2500.00
May 3, 1929, check #2556	508.94
May 14, 1929, check #2607	695.00
May 4, 1929, check #2605	1448.00
June 11, payment by Lincoln Mtg. Co. . .	13000.00
June 7, check No.	200.00
June 6, check No.	11.72
July 29, paid by Brown on Asyl. job ...	2949.00
July 30, 1929	933.50

I got the above from three different records. This comprises all payments made to Standard Sanitary Manufacturing Company on account of the Phoenix Plumbing & Heating Company during that period so far as I am able to ascertain.

Q. Can you refer to the books and see if they reveal a time during April or May, 1929, during which weekly payments were made to the Standard Sanitary Manufacturing Company by the Phoenix Plumbing & Heating Company?

A. The only information we have is the stubs of the checks issued for three different weeks.

Q. Will you refer to them please, and read them into the record?

A. The first check is No. 2494, shown in Exhibit No. 19 in Evidence, dated April 26, 1929, for amount of \$947.97, payable to Standard Sanitary Manufacturing Company for purchases for week ending

(Testimony of Jerrie Lee.)

April 20th; check No. 2556, May 3, 1929, \$508.94 [402] payable to Standard Sanitary Manufacturing Company, purchases for week ending April 27th; Check No. 2605, dated May 8, 1929, for \$1-448.00, payable to Standard Sanitary Manufacturing Company, purchases for week ending May 4th.

Q. These were all in 1929?

A. Yes, on the dates given.

Q. Will you testify from your examination of the books and records of the Phoenix Plumbing & Heating Company of payments made to Fred Noll, of the Fred Noll Tire Service, prior to August 17, 1929, and subsequent to June 1st, 1929.

A. Referring to No. 1 for Identification, No. 7 in Evidence, shows Fred Noll Tire Service Station having a credit of \$24.75 in April, and on May 31, \$44.50; the total, \$69.25.

Q. I said subsequent to June 1st.

A. I will have to go over these stubs. First payment in June, No. 2887, June 24, \$9.90; No. 2895, June 27, \$28.25; No. 2919, July 1st, \$10.85; No. 2946, July 12, \$16.25; referring to the cash book, No. 6 for Identification, No. 7 in Evidence, page 26, line 2, July 15, \$4.31; total balance of \$69.56, for the period between June 1st and August 17, 1929.

The following receipted bill and statements introduced as Petitioners' Exhibit No. 24 in evidence. [403]

PETITIONERS' EXHIBIT No. 24.

In Evidence.

STATEMENT.

FRED NOLL TIRE SERVICE.

540 W. Van Buren,

Phoenix, Ariz.

To D. Francis

separate from

Plumbing bill during May

Date	Article	Debits	Credits	Balance
5/ 9	5 gal gs	1.00		
12	tu repair .....	.50		
13	9½ gall g	1.90		
14	12 gall g	2.40		
16	1½ gall g .....	.30		
16	2 q oil .....	.70		
27	5 gal gas	1.00		
6/ 3	5 gal gas 7 qt oil	3.45		
9	1 q oil .....	.25		
			Pd.	
6	9 gal gas.....	1.80	7-12-29	
24	5¾ gal gas	1.15		
24	9 gal gas	1.80		
		—————		
		16.25		

All the above is use out figureing job.

D. FRANCIS.

B.

Attached to the above were small debit slips which were itemized as follows:

506 *Standard Sanitary Manufacturing Company*

5/ 9/29	Phx. Plumb 1 qt. oil.....	.25
	Marie Francis	
5/14	Phx. Plumb 10 gal gas	2.40
	Tucson D. Francis	
	Phoenix Plumb Co. 5-13-29	91½@20 1.90
	Yuma D. Francis	
5/12/29	Phoenix Plumb 1 tire rep. chg.....	.50
	D. Francis.	
5/ 9/29	Phoenix Plumbing Co. 5 gal. @ 20 ..	1.00
	D. Francis.	
5/10/29	Phoenix Plumb 1½ gal Gas @ 20 ...	.30
	D. Francis.	
5/10/29	Phoenix Plumb Co. 2 qts. oil @ 35...	.70
	D. Francis M. F.	
May 3 1929	Phx Plumb Co. 5 gal gas	1.00
	7 qt. oil @ 35.....	2.45
	Safford D. Francis Ck. No.	
	30448	
5/27/29	Phx. Plumbing 5 gal Gas	1.00
	Glendale D. Francis	
5/ 6/29	Phoenix Plumb 9 gallon	1.80
	Safford D. Francis	
5/24	Phoenix Plumb. Co. 9 gal. gas @ 20..	1.80
	Prescott D. Francis	
5/24/29	Phx. Plumb. Co. 2¾ gal. Gs @ 20...	1.15
	Desert Hotel D. Francis [404]	

B.-522. Petitioners' Exhibit No. 16. For Identification.

There is no record of a transaction with one Joy in any of the books. There is nothing shown under accounts payable or any loan account, and in my examination I found no invoice covering such a transaction, and there was no inventory of merchandise

(Testimony of Jerrie Lee.)

account kept on the books. There would be no way of tracing such a transaction on the books.

The liabilities of the Phoenix Plumbing & Heating Company on April 30, 1929, as taken from the books amount to \$69,240.35, itemized as follows:

Contracts Payable William Remsbottom .	\$ 92.50
Notes Payable Commercial National Bank	6000.00
April 30th cash advanced by Joe Thomas .	1087.82
Accounts payable	62059.73

Total Liabilities\$69240.35

The assets taken from the books and statements furnished to the Bank, memoranda and statements in the files show on April 30th, 1929, the following:

Accounts receivable	\$ 5396.86
Cash on hand	264.45
Inventory of March, estimate (merchandise)	5000.00
Auto trucks	400.00
Furniture & Fix.	499.75
Shop tools & Equip.	365.00
Contracts Receivable as listed on books..	72338.30

Q. That includes the contracts completed and un-completed?

A. That is every contract, regardless of whether never completed or never started but set up in the books; in some instances they have been paid and not credited on the books; this is a part that was estimated. There were a certain number of jobs not completed as of April 30th. This information I obtained from Mr. Gehres and Leo Francis and same has been testified to since by Mr. Fryberger,

(Testimony of Jerrie Lee.)

but I never talked to him; I listed the asylum job as not completed, \$4,021.25, as it has just been started; the city hall job was not completed, \$8,707.85; the E. J. Bennitt [405] job, not completed, \$1,968.86; the F. B. Schwentker job, not completed, \$2,634.00; the Phoenix Union High School job, \$4,136.50; the library and class-room job, \$9,410.12; the Harry Tritle job, \$1,554.75; the Yuma High School job \$5,717.00; then there is an item appearing on the books, Bachowetz apartments. I was told by Leo Francis that it had no value and it was in litigation and that therefore he did not feel that it was an asset, so I eliminated \$3,700 for that. In checking the record I found there was a lien and first mortgage to J. M. Sullivan due November 1, 1928. I listed \$45,189.83 as assets for this reason. If these books had been properly set up there would have been a liability side on the ledger and we could have known how much work was completed and how much there was to be completed; the total of jobs appearing to have been completed and on which money was due and would be assets was \$27,148.47.

Q. Then what would the total assets have been eliminating uncompleted contracts?

A. \$39,074.53.

Q. And total liabilities? A. \$69,240.35.

All these liabilities of \$69,240.35 were open accounts. There was an item there of debts to the following companies: Standard Sanitary Manufacturing Company, Crane Company, Union Oil Company, Pratt-Gilbert Company, Momsen-Dunne-

(Testimony of Jerrie Lee.)

gan-Ryan Company, Fred Noll Tire Service; all these appear as unsecured creditors. No new work and no profit appear between April 21st and April 30th, 1929, on the books and records of the Company. There was no record kept reflecting profit and loss.

Q. From your examination of the books and records of that company, you compiled a statement of the financial condition [406] of the company as of August 17, 1929? A. Yes.

Q. Will you state what were the debts of the Phoenix Plumbing & Heating Company on August 17, 1929? A. Liabilities?

Q. Yes.

A. Accounts payable, as shown by the records of the company, \$64,980.47; notes payable to the Commercial National Bank, \$6,100; a total of \$71,-080.47.

Q. Will you state what property and assets the Phoenix Plumbing & Heating Company had as of that date, from your examination?

A. Cash in bank, as shown by the records, \$20.97; cash on hand, \$5.42; accounts receivable, \$5,859.70; merchandise inventory, estimated, \$3,000; furniture and fixtures, \$499.75; auto trucks, \$400; shop tools and equipment, \$365.00; contracts receivable, including both finished and unfinished jobs, \$49,073.66, from which I have eliminated the Bachowetz Apartments, \$3,700, for the reason as stated before; City Hall job, \$8,707.85; Schwentker job, not complete, \$1,973.50; Phoenix Union High School, not com-

(Testimony of Jerrie Lee.)

plete, \$3,342.70; Phoenix Junior College, \$2,106.00; High School library, \$9,410.12; Yuma High School, \$2,719.92; the total was \$31,960.09, leaving a total of assets of contracts receivable of \$17,113.57.

Q. What were the total assets of the company then as of August 17, 1929? A. \$27,364.41.

Q. And the total liabilities? A. \$71,080.47.

Q. From your examination of the books and records can you find anything in the books or records that you have [407] examined that would indicate any change for the better in the financial condition of the Phoenix Plumbing & Heating Company as you have testified same was shown on April 30, 1929—subsequent to that date and up to August 17, 1929?

A. There is nothing to indicate that there has been any betterment of conditions financially between April 30th and August 17th, 1929; no new capital has been put into the business.

(Statements of April 30 and August 17, Petitioners' Exhibit No. 25 in Evidence.) [408]

B.-522.

PETITIONERS' EXHIBIT No. 25.

In Evidence.

12-3-29.

Letter Head.

THE SOUTHWEST AUDIT CO.

PHOENIX PLUMBING & HEATING COM-
PANY.

FINANCIAL STATEMENT.

August 17, 1929.

ASSETS:

Cash in Bank.....	\$ 20.97
Cash on hand.....	5.42
Accounts Receivable	5,959.70
Contracts Receivable	17,113.57
Mdse—Inventory—Estimated	3,000.00
Furniture & Fixtures.....	499.75
Auto Trucks	400.00
Shop Tools & Equipment.....	365.00
Deficit	43,716.06

TOTAL.....\$71,080.47

LIABILITIES:

Accounts Payable	\$64,980.47
Notes Payable—Commercial Nat'l. Bank	6,100.00

TOTAL.....\$71,080.47

B.-522.

PETITIONERS' EXHIBIT No. 25.

In Evidence.

12-3-29.

Letter Head.

THE SOUTHWEST AUDIT CO.
PHOENIX PLUMBING & HEATING COM-
PANY.

FINANCIAL STATEMENT.

April 30, 1929.

ASSETS:

Cash on Hand and in Bank.....	\$ 264.45
Accounts Receivable	5,396.86
Contracts Receivable	27,148.47
Mdse.—Inventory—Estimated .. .	5,000.00
Furniture & Fixtures	499.75
Auto Trucks	400.00
Shop Tools & Equipment.....	365.00
Deficit	30,165.82
	<hr/>
TOTAL.....	\$69,240.35

LIABILITIES:

Accounts Payable	\$62,059.73
Contract Payable—Wm. Remsbottom	92.80
Notes Payable—Commercial Nat'l.	
Bank	6,000.00
Cash Advanced by Joe Thomas.....	1,087.82
	<hr/>
TOTAL.....	\$69,240.35

(Testimony of Jerrie Lee.)

(Examination by F. J. DUFFY.)

The books we used in arriving at the audit were probably more than we needed. They were the accounts payable ledger, contracts receivable and accounts receivable, cash book, check book, mutilated checks and stubs. The books were not the accepted method even in smallest kind of books. Auditors often work on books different than accepted method. Accountants are not needed on accepted method. Many firms do not keep complete sets. Where set of books contains accounts receivable, accounts payable, cash book and check stubs, we can get a pretty good idea of the business,—that is if they are not destroyed.

Q. Now, as a matter of fact in this particular case on the books that were available and are here present you have been able to trace out any given set of payments and arrive at approximately the true situation in regard to any account,—isn't that true?

A. From the stubs and the checks we have been able to trace out most of the payments but my efforts in the matter of the Phoenix Plumbing & Heating Company have been confined to one big account, as you well know, and fortunately even though the checks were mutilated, they were not completely destroyed, and through the assistance of your clients we were able to piece together information enough to get the true facts as concerned your client.

Q. Isn't it a fact that without the assistance of

(Testimony of Jerrie Lee.)

my client you were able to trace other payments on one contract through last winter and last fall to September, 1928, and show payments all through, isn't that true?

A. I don't know which one you mean, not from the records of these books. It was through the records of the city [411] hall, and I had to go out and get my information; it was not a bookkeeping job.

Q. Didn't your audit on that show payments from the books? A. No, sir.

Q. Payment of \$8,000 that had gone from the Phoenix Plumbing & Heating Company to the Standard Sanitary? A. The books showed some.

Q. On your audit there you pointed out definitely certain payments through September, October, and November of last year to the Standard Sanitary Company?

A. I traced them out of the office; it was not from the records; we had at our disposal other records.

Q. But you did verify them from the check stubs here, didn't you?

A. Yes, and records in the city hall.

Q. So that you were able in this particular case and with this set of books to find out approximately how much was due and how was paid the Standard Sanitary Company on account of the city hall job?

A. Yes, and a big aid in discovering this was the architect's office, which we did not touch in these other jobs.

(Testimony of Jerrie Lee.)

Q. But it was recognized by the parties in interest and by the Standard Sanitary Company by that time that you had dug out facts sufficient to make good evidence in court to establish the true status of this matter, through those books?

A. You mean without any assistance, outside assistance? Like an architect, the bank or other sources of information?

Q. It was recognized by the Standard Sanitary Manufacturing [412] Company and the Southern Surety Company that you had dug out from the books of the Phoenix Plumbing & Heating Company sufficient facts to make evidence in court as to the standing of that account?

A. You mean from the records of the Phoenix Plumbing & Heating Company books?

Q. I mean from the books of the Phoenix Plumbing & Heating Company.

A. I did not prepare the statement solely from the Phoenix Plumbing & Heating Company books, therefore I could not answer yes or no. I prepared it from other avenues of information,—your own client, the bank, and any place I could get information.

Q. When you started on this job you went to the books of the Phoenix Plumbing & Heating Company?

A. When I started I took the statement of the Standard Sanitary Manufacturing Company and worked on it for ten days without reference to any

(Testimony of Jerrie Lee.)

books; just the Plumbing Company's statement alone was what we had—

Q. You mean the Standard Sanitary Company?

A. Yes.

Q. As a matter of fact, the last thing you got was that statement of the Standard Sanitary Company.

A. I beg your pardon. I got that to check your first statement made months beforehand,—how you were going to bill them now,—as to how you billed them originally.

Q. But you did get the first statement you worked on among the papers of the Phoenix Plumbing & Heating Company? A. Yes.

Q. And it was part of their records over there?

A. Yes. [413]

Q. It was statements rendered by the Standard Sanitary Manufacturing Company to them, wasn't it? A. Yes.

Q. Then you went to the books of the Phoenix Plumbing & Heating Company, didn't you?

A. No. Then I went to mutilated checks and check stubs. Very little reference was ever made to those books, other than the cash book, the deposit slips, the mutilated checks and check stubs.

Q. When you went in on the Southern Surety Company job you went in to find out what information you could and how much money had been paid on the city hall job, didn't you?

A. That is true, yes.

Q. And you wanted to do that as quickly as possible, didn't you? A. Certainly.

(Testimony of Jerrie Lee.)

Q. And you used a portion of the records of the Phoenix Plumbing & Heating Company, and some of the records of the Standard Sanitary Mfg. Company and some of the records of the city hall, isn't that true?

A. I used all of the records available of the Phoenix Plumbing Company, and those that were not available, I looked for outside information from the Standard Sanitary Company.

Q. But with the material on hand you did arrive at a pretty nearly correct statement of the situation of the Phoenix city hall job, so far as the Phoenix Plumbing & Heating Company was concerned?

A. With one exception,—that was the verification at the architect's office; with those two sources I could have arrived at a definite conclusion as to how much money [414] was paid in on the job.

Q. Isn't it true that, given the same situation you had on the Southern Surety and the city hall job,—if you had had a complete set of books of the Phoenix Plumbing & Heating Company you would have covered the same ground and checked through the same sources as you did in these?

A. Yes.

Q. There was a general ledger, and a fairly accurate set of books kept after April 22, wasn't there? A. No.

Q. What was missing?

A. There was no capital account; no merchandise account; no inventory account; no control accounts;

(Testimony of Jerrie Lee.)

nothing that would bear out the name of a general ledger in the general ledger book.

Q. But anything from April 22 to August 17th could be traced down through these books?

A. Through the checks and check stubs but they were not entirely complete.

Q. And if there had not been an explosion, and there had been a cash book and one other book missing, you would have been able to trace these other items through January and February and March, wouldn't you? A. Yes.

Q. And if the cash book and other books missing were kept in the same manner as those other books were kept, you would have been able to trace them through? A. Yes, I think so.

Q. It is true there was no cash book burned from May 24, 1928, to the date of the explosion?

A. Yes, to the best of my knowledge. [415]

Q. You saw that little part of the book burned and torn here? A. Yes.

Q. Isn't it a fact that most of the check stubs were available?

A. There were about two books missing.

Q. Two books of check stubs? A. Yes.

Q. There were available bank statements, deposits and withdrawals?

A. Not from the source of the Phoenix Plumbing & Heating Company, no.

Q. There were bank statements of deposits and withdrawals?

(Testimony of Jerrie Lee.)

A. Here is the kind we had to work with; this is the class of statement we had to work with.

(Exhibiting mutilated statement included in Petitioners' Exhibit No. 12 for Identification, No. 7 in Evidence.)

Q. Those were mutilated, weren't they?

A. Yes.

Q. Those mutilated statements that were impossible to use,—did they cover the same period as the missing check stubs?

A. I don't recall as to that.

Q. The purpose of an audit, Mr. Lee, is to find out the status of a given business?

A. Yes, that is true.

Q. And if the books of that company enable the auditor to trace down the assets and liabilities of the company so that he can get a fairly accurate statement of it, they serve their purpose, do they not? A. Yes.

Q. The question is not as to whether they kept a set of books that would enable an auditor to tell at a glance the status of a business? [416]

A. Yes, that is true.

Q. It is also true that you have books which show the accounts receivable, the accounts payable, a bank book, cash book, and check stubs, you can strike a balance as to assets and liabilities of a company? A. And a journal.

Q. What is a journal?

A. A journal is used to set up capital accounts, and those accounts that do not go through the bank

(Testimony of Jerrie Lee.)

cash or checks; to set up accounts payable and accounts receivable and an inventory account, and it is the backbone of bookkeeping in most establishments.

Q. Isn't it true that in every business if you go on the premises to make an audit, if there wasn't an inventory account you could make an inventory as it stands right there?

A. Yes, that is true; you could take a physical inventory.

Q. And in this case, even if there was no journal, the material the company owned was there, the furniture and fixtures was there?

A. That is true.

Q. What other accounts go into the journal?

A. All accounts affecting the general ledger are journalized.

Q. The journal is a recapitulation of the whole thing isn't it? A. No, sir. [417]

Q. Is there any book here that has any of the information that is ordinarily found in a journal?

A. The cash book has information that would be in a journal, in what we call a cash journal and could be used as a combination cash book and journal, but this book hasn't made that provision.

Q. But it does reflect cash received.

A. For a certain period.

Q. It has accounts receivable set up?

A. As to the accuracy of that I cannot say as there is no control account and there is no way to determine what should have been set up as accounts receivable.

(Testimony of Jerrie Lee.)

Q. And they have accounts payable?

A. Yes. [418]

Q. And they did have check stubs with some omissions? A. Yes.

Q. They had a bank book? A. Yes.

Q. They had a cash book.

A. For a period they had a cash book.

Q. And one cash book was missing?

A. I don't know how many were missing; there is a gap between that one and this one.

Q. One from October, 1927, to May, 1929?

A. Yes.

Q. And another from April 22 to date?

A. Yes.

Q. But from May 24, 1928, to April 22, 1929, there was no cash book? A. That is true.

Q. Isn't it true also, Mr. Lee, that when you went in there on this audit, the Leo Francis and Mr. Fretz the bookkeeper did all they could to help you?

A. Yes.

Q. Were you able to get hold of Mr. Gehres?

A. Yes.

Q. Did he show any disposition to hide things?

A. He did the first day until it developed that a \$1,200 check was discovered and it was made out in his name, and that is the last I have seen of him. We went into those accounts very thoroughly with Mr. Fretz and Leo Francis also came up and assisted us as much as possible. [419]

D. Francis check books (referring to Petitioners'

(Testimony of Jerrie Lee.)

Exhibit No. 1 for Identification, 7 in Evidence) showed on the stub where the money went for which he issued checks and was a fairly complete record. On the weeks that checks for \$45 were drawn by D. Francis his name does not appear on the pay-roll but his pay was collected by his wife and Francis account of \$848.32, including three or four different salary payments of \$45.00 per week, but in the main consisted of other payments. The \$12.00 per week paid by the boys was collected by Father. This account is clear on books. The company bought large quantities of material and paid large sums for labor. The check stubs I have testified to as missing are as follows:

A. This one begins 301 to 600; the next is 1801 to 2100; the next is 2401 to 2700, then 2700 to 3,000; 3001 to 3300; there are more missing than I thought.

The MASTER.—That would indicate four check books missing?

A. There are more than that. The one beginning 301 to 600 covers March 24, 1928, to June 19, 1928; 1801 begins Nov. 9, 1928, and ends December 11, 1928; 2401 to 2700 begins April 30, 1929, to May 18, 1929; 2704 begins May 18, 1929, and ends July 25, 1929; 3001 begins July 27, 1929, and ends No. 3052, August 15, 1929. There must be about six check stub books missing.

Q. From the period beginning April 17, 1929, to August 17, 1929, there are no stubs missing, are there? A. From here?

(Testimony of Jerrie Lee.)

Q. From the 13th of March to the 17th of August there is a continuous check stub record, isn't there? [420]

A. No. Beginning April 13, with the exception of stubs 2401, 2402, and 2403—the others appear to be here.

Q. Those numbers are 2401-2-31?

A. Yes, the book doesn't look as though they had ever been in here at all.

Q. Does it show from the books whether or not they have been torn out?

A. It doesn't look as if they had ever been in here; there is nothing to indicate they were torn out.

Q. Was the bank statement that is issued every month for the month of March, 1929, destroyed?

A. I will have to refer you to the record to tell you.

(Witness examines statement.)

A. For the period of March 1 to 14th is destroyed; period from March 14 to 26 was mutilated; March 27 to 30th was all right.

Q. There was a portion of the statements for that month that was in such shape that you get the figures off that? A. Yes, sir. [421]

The deficit of \$30,165.82 on my statement of April 30, 1929, is made up of the difference I found to be liabilities and what I determined to be assets. The bill of Standard Sanitary was \$41,887.64. Crane Co., \$1,483.48, and a number of other accounts made up the accounts payable shown of \$62,159.73. These items were for merchandise, purported to be deliv-

(Testimony of Jerrie Lee.)

ered. I could not certify it was delivered. There was not \$41,000 worth of finished material on the premises of Phoenix Plumbing and Heating Company in my judgment.

Q. As a matter of fact, from the books and records of the Phoenix Plumbing & Heating Company and the accounts as stated there on the books of money received from various jobs, it showed that this material that was billed by the Standard Sanitary Mfg. Company to the Phoenix Plumbing and Heating Company had been installed in these various jobs; that is true, isn't it?

A. I don't think that is a question I could answer; I cannot say, if it was or not.

Q. Among the accounts and contracts receivable on the books of the Phoenix Plumbing & Heating Company, you found there were certain credits for money received by the Plumbing Company on these contracts, didn't you? A. Yes.

Q. These credits extended over quite a period of time, prior to April 30th, on the books, didn't they?

A. Yes.

Q. Isn't it a fact that as an auditor you knew at the time you made this statement that a great deal of the [422] material which had been delivered by the Standard Sanitary Mfg. Company to the Phoenix Plumbing & Heating Company which appeared as a charge against the Phoenix Plumbing & Heating Company was in these various contracts that appear in the accounts receivable of the company?

A. Yes. That is why I am more firmly convinced

(Testimony of Jerrie Lee.)

in eliminating it; in the city hall job there was \$15,000 worth of material charged against what would have been an asset of \$8,000; so it wipes it out two to one, and it is true in the high school jobs and the Yuma High School job.

Q. Even though the records showed \$16,000 worth of material not paid for by the Phoenix Plumbing & Heating Company, and a credit of \$8,000, did you give on this statement of the Phoenix Plumbing & Heating Company credit for an amount equal to that which was due?

A. No, and I didn't charge it up with the liability of what was due.

Q. But you did charge every item of material that was delivered by the Standard Company and not paid for as a liability, didn't you? A. Yes.

Q. And in addition to that you attempted to charge as a debit the credits that the Phoenix Plumbing Company had coming on jobs where the material you were charging as a liability had been placed on the job?

A. As of April 30 we had no way to determine, or even yet, because they had not determined whether there was to be more material than even this \$16,000.

Q. You did, however, have before you those figures that on the city hall job there was a bill of \$16,000 owing to the Standard Sanitary for material put into the city hall? [423] A. Yes.

Q. And you included that \$16,000 in your total of \$62,000 of amounts payable? A. Yes.

(Testimony of Jerrie Lee.)

Q. And then you also knew that on the city hall job there was still to be paid on the Phoenix Plumbing & Heating Company contract the sum of \$8,700?

A. Yes.

Q. And you also knew from your conversations with Mr. Lescher that that job was completed except for its acceptance and the O. K. of the surety company?

A. And some minor, and perhaps major labor and material to go in there before it was accepted; the amount I cannot say.

Q. But you were told by Mr. Lescher that they did not exceed \$700?

A. He said that was the approximate amount.

Q. Then you went to work to make your deficit of \$30,165.82 deducting all the money due the Phoenix Plumbing & Heating Company from the city hall job?

A. I did that for the reason that the books did not reflect the liability side and it was impossible to determine what potential asset, if any, they had in this \$8,700.

Q. And that is just your estimate then?

A. I told you so at the beginning.

Q. And at the time you charged them liabilities—you knew there was approximately \$8,000 credit due them and yet you put that in as a liability also?

A. I have eliminated it as either liability or asset.

Q. You used it as one of the figures to make the debit on the accounts receivable which reflects this deficit. [424] You stated on April 30th all ac-

(Testimony of Jerrie Lee.)

counts receivable, \$72,000, and that from that you had deducted certain amounts, giving the amounts, and the city hall job was \$8,785.85? A. Yes.

Q. And yet you knew at the time that there was a clear credit to the Phoenix Plumbing & Heating Company of approximately \$8,000 on that job?

A. A contract is never a credit until it is completed, which has been proven in six of these jobs.

Q. You knew that they received the money?

A. Not to my knowledge, no.

Q. You were the auditor who prepared the statement—

A. I did not attend the conference of settlement and did not know the status of that case; I don't at this minute.

Q. You knew that \$8,700 was there; isn't it true that on this statement of yours here, that you have appearing as liabilities in the amount of \$62,000, in accounts payable, \$16,000 of material that the Standard Sanitary Mfg. Company had furnished to the Phoenix Plumbing & Heating Company, as a liability? A. Yes.

Q. And you also had charged as a liability the amount of money remaining on the city hall job?

A. I eliminated it as an asset because it was not proved an asset.

Q. But you have not deducted an equal amount from the liabilities?

A. You would not, in bookkeeping practices.

Q. But this is your own knowledge of this situa-

(Testimony of Jerrie Lee.)

tion; you know there is a credit to this amount?
[425]

A. It could not be a credit until the job was completed and accepted.

Q. It was known that \$8,000 was owing to them in cash?

A. Contingent upon their having completed it and its being accepted.

* * * * *

Q. Were you not told at that conference that the heating apparatus required to be installed and little odds and ends to complete it would amount to \$700, leaving \$8,000 clear?

A. As a matter of fact, neither Mr. Lescher or Mr. Mahoney made any direct statement to me as to what it would take to complete the job; the conversation was with Mr. Bartlett, the representative of the Southern Surety Company. I was not interested in the settlement of the affair; I was interested only in figures but not in any figures for the completion of the job; my work did not extend that far.

Q. You were just starting your audit?

A. I was just completing it; I was verifying my figures with theirs.

Q. Will you say that that statement was not made there in your presence?

A. I do not recall it.

Q. Now, Mr. Lee, you testified that on the city hall job you discovered that according to the records, on the 30th of April there was a balance due

(Testimony of Jerrie Lee.)

to be paid on that job as a credit, the sum of \$8,-707.85?

A. That was what their contracts receivable record showed.

Q. On the 17th of August, 1929, you also found that there was a credit of \$8,707.85 on the city hall job? A. Yes. [426]

Q. And in both of these statement you made here, one as of the 30th of April and one August 17, 1929, you take that credit from the assets of accounts receivable, do you not? A. Yes.

* * * * *

Q. When you deducted the \$8,700 from the accounts receivable, you did not deduct a like amount from the account of the Standard Sanitary Mfg. Company charged to the Phoenix Plumbing & Heating Company, did you? A. No, sir.

Q. When you made your statement of April 30th the books there showed under contracts receivable the sum of \$72,338.50? A. Yes.

Q. That was what the books of the company reflected? A. On the asset side.

Q. And when you made up this statement you deducted from that contracts receivable the sum of \$45,000? A. Yes.

Q. Which constituted the amount which was to be paid on them?

A. Which represented credits claims on uncompleted jobs.

Q. And which in the ordinary course of business they would receive if they finished the work?

(Testimony of Jerrie Lee.)

A. Subject to the expenditure of labor and materials to complete.

Q. But that labor had not been incurred?

A. There might have been some of it.

Q. In the statement of April 30th you did not know whether the account of the Standard Sanitary Company, which was then some \$40,000—you did not know how much of the material that that account payable of the Standard Sanitary [427] had already been received and put into those jobs?

A. As to each individual job?

Q. Yes. A. No, sir.

Q. So far as you knew, every cent of the Standard Sanitary account as it appeared on the books of the Phoenix Plumbing & Heating Company on the 30th of April, 1929, might have been for goods delivered, received and put into those jobs which they were carrying on the books as accounts receivable? I am limiting this to the liability—my question is that the whole account of the Standard Sanitary Company on the books of the company on April 30th, 1929, might have been delivered and put into those jobs covered by the accounts receivable in the assets?

A. It is probable that all of these materials went into some jobs, and the books did not reflect it. They kept no accounting system, and you couldn't possibly tell what went in and what didn't.

Q. The books showed they had been billed in the sum of \$41,887.64, and the item of \$41,887.64 showed they had been billed for that amount? A. Yes.

Q. What I am getting at Mr. Lee is this—so far

(Testimony of Jerrie Lee.)

as you knew or could find out that \$41,887.64 of material, which stood as a liability on the books of the company, might have been put into these different jobs that are called accounts receivable in their assets?

A. It is possible they could have been put in?

Q. As an auditor in examining these records you found there was \$41,887.64 due the Standard Sanitary Company according to the bills entered in the books? A. Yes. [428]

* * * * *

Q. You found, as of April 30th, 1929, that there was \$72,000 in contracts receivable on the books; you also found that in the accounts payable was the sum of some \$41,000 due the Standard Sanitary; you also found there was due to Crane Co. \$1483.83?

A. Yes.

Q. Crane Co. is a dealer in plumbers supplies?

A. Yes.

Q. The Elliott Engineering Company is a concern that makes and sells engines?

A. I am not familiar with their line.

Q. Did the records of the Phoenix Plumbing & Heating Company reveal what the item of \$5,944.00 owing to The Elliott Engineering Company consisted of? A. No.

Q. Were there any invoices?

A. There may have been; I don't know.

Q. You didn't go to the invoices? A. No.

Q. Do you know the nature of the business done by the Oil Burning Equipment Company?

A. Yes.

(Testimony of Jerrie Lee.)

Q. What did they deal in?

A. Installed oil-burners for heaters.

Q. Their amount was in the sum of \$4,429?

A. Yes.

Q. Did the books reveal what the items were that went to make up that account? [429] A. No.

Q. Did you look at the invoices to ascertain?

A. I did not.

Q. The Southwestern Mfg. & Supply Company?

A. No.

Q. Do you know what the Williams Peper Company deals in? A. No.

Q. The Los Angeles Supply Company?

A. No.

Q. Do you know the Allison Steel Company?

A. Yes.

Q. They manufacture iron ware?

A. Yes, iron and steel.

Q. In either of these cases did you go to the invoices to find out any of the items? A. No.

Q. You just went to the books? A. Yes.

Q. You made no attempt, in making up this statement, to ascertain through the invoices what particular contracts the various items making up these accounts payable were charged to?

A. The scope of my investigation was not of a nature which permitted a general audit for the reason that I spent only about two days on it before I came up here. I did not have time to verify accounts receivable or payable; that is about a six months' job to set up that on a basis that would be intelligible.

(Testimony of Jerrie Lee.)

Q. But the invoices would reveal—would give you the information as to which jobs the various items in this supply house been charged to, wouldn't they?

A. Not having investigated them, I couldn't say.
[430]

Q. You are a certified public accountant, and have been for a number of years making audits of several kinds, general outline audits and others, thorough audits of the accounts and books of companies—that is true, isn't it? A. Yes.

Q. And these audits have extended to business houses over a wide range of business enterprises?

A. Yes.

Q. And in making these audits it is absolutely necessary that you have a good working knowledge of the trade customs of the company you audit?

A. Yes.

Q. Then you know as a matter of fact that where supply houses are dealing with a retail concern such as the Phoenix Plumbing & Heating Company where they are delivering finished articles and the Phoenix Plumbing & Heating Company installing them in different jobs, that they insist on the contracts showing the jobs or contracts which they are to be used in, do you not?

A. I can answer that by referring to the invoices which speak for themselves.

Q. Can you or can you not answer?

A. If the invoices were submitted to the Phoenix Plumbing & Heating Company.

Q. I am asking about the trade custom.

(Testimony of Jerrie Lee.)

A. It is true that some firms do, but it is not true that Crane Co. did; the Standard Sanitary attempted to follow it, but not to the letter. On the Central Heating Plant job, an item of \$175.05 is marked just "called for"; \$502 is marked Central Heating Plant job; they are not consistent with it; I don't know whether it is true with other wholesalers or not. [431]

Q. But in any event, you did not go to the invoices? A. No.

Q. But without going to the invoices and without finding out whether the \$41,000 due the Standard Sanitary Company for material delivered to the Phoenix Plumbing & Heating Company was placed in these accounts that went to make up the accounts receivable, you deducted all of the contracts not yet paid from the assets—the ones not yet completed, I mean? A. Not yet completed? Yes.

Q. If you had gone to the invoices and found that that \$41,000 owing to the Standard Sanitary was charged to the contracts receivable, would you then have deducted the \$45,000 on those contracts that you did, in those statements?

A. If I had gone into a general audit, which you are calling for now, I would have gone back if it had been possible and the records had been complete, to jobs of every kind and built up an accounting system, and at that time, when I set up contracts receivable I would have set up the other side, the liability side, and it would have been reflected.

Q. And then if you had made a complete audit

(Testimony of Jerrie Lee.)

this statement you have submitted here would reflect the total amount of contracts receivable?

A. Yes.

Q. And under that general head you would have two columns, one of the things that had been charged against that, and another material furnished? [432]

A. That would be reflected on the liability side.

Q. And there would be the amount of money to be received as against these charges?

A. Yes, that is true.

* * * * *

Q. In addition to the amount due on the city hall job you also deducted the sum of \$40,000 on the asylum job? A. Yes.

Q. Now, at the time you examined the books in August did you find any records of the Phoenix Plumbing & Heating Company showing what the condition of that asylum job was on the 30th of April?

A. That was the job that I was informed by the bookkeeper and Leo Francis had not been completed; it had been started just a short time before this period, and it was completed between April 30th and August 17th.

Q. You did not in that case look at the invoices to see whether or not all the material to be used on the job had been delivered on the 30th of April?

A. No.

Q. You just took that amount of \$40,000 from the accounts receivable?

(Testimony of Jerrie Lee.)

A. Yes, for the reason that I was told it was not a completed job, and was therefore not an asset.

Q. You were not told it was not an asset?

A. No, that was my reason for taking it off.

Q. If in making up the statements you had found from the invoices that all of the work on that job had been done and nothing remained except the payment of money, would you have taken that \$40,000 out of the assets?

A. No, I didn't in the other assets.

Q. But you did not attempt to find out at the time you were making the statement as of April 30th, whether that [433] job was completed?

A. I did. That was why I eliminated it; they told me it had not been completed.

Q. You knew when you made the audit that there were other sources of information besides Fretz, and Leo Francis that would aid you in ascertaining the status of the jobs?

A. I considered that the most reliable that could be used on April 30th.

Q. Isn't it a fact that when Francis and Fretz made that statement to you, you took that statement and did not look any further to find out the status of the account? A. That is true.

Q. And this was the asylum job? A. Yes.

Q. And you knew it was the asylum job, didn't you? A. The books said it was.

Q. You knew there were books available on the status of that job in the office of the architect and in the office of the state board of public institutions, did you not?

(Testimony of Jerrie Lee.)

Miss BIRDSALL.—I object to that; he has testified to a statement he made from the records of the company and such information as he saw; it has nothing to do with the issues here that there were other records.

(Argument by counsel.)

The MASTER.—If the sources were not material or should not have been noted, the effect of it is the opposite of that intended by him; if it was material, he has a right to show that; that is a fair question.

(Exception to Master's ruling taken by Miss Birdsall.) [434]

A. From my own knowledge, no.

Q. When you went there to look over the books and work as of April 30th, you saw around there this account in which was listed money contracts receivable, did you not? A. Yes.

Q. And it was listed as the insane asylum job, this one?

A. Yes, pardon me—it was listed under W. H. Brown.

Q. At that time the state of Arizona was putting up this addition to the insane asylum? A. Yes.

Q. You knew that W. H. Brown was the contractor?

A. I think he is the doctor or superintendent out there.

Q. But you saw his name? A. Yes.

Q. And you made no inquiry?

A. Yes, I asked and they said it was the asylum job.

Q. And you know, not only as an accountant but

(Testimony of Jerrie Lee.)

as a citizen, that such accounts are kept at the office of the Board of state institutions, do you not?

Miss BIRDSALL.—I object to that; it is not a proper question.

A. I know that state records are kept at the state house, yes, sir.

Q. Then at the time you were examining these books to prepare this statement as of the 30th of April, you made no further attempt beyond the statements of Fretz and Francis as to this job?

A. No.

Q. And despite this general knowledge you had of the status of that, you never attempted to find any further information beyond those statements?

A. I took it as it was shown on the books. [435]

Q. This is a matter of fact, regardless of any statements—if in truth and in fact the records showed that job was completed except for the payment of money, you would not take that \$40,000 out of the assets, would you? A. No.

Q. You found that the amount to complete the E. J. Bennitt job was \$1,968.68 on the 30th of April?

Miss BIRDSALL.—I object to that; his statement shows that amount stood on the books and that it was uncompleted.

Q. You found that there was \$1,968.68 still to be paid on the E. J. Bennitt contract?

A. Yes.

Q. And you deducted that from accounts receivable? A. Yes.

Q. That was the total amount of that contract?

(Testimony of Jerrie Lee.)

A. The original contract was for \$2,898.30.

Q. On April 30th approximately half of that contract was to be paid, wasn't it?

A. Yes, sir. There were additional charges for extras.

Q. And you didn't deduct those charges?

A. No.

Q. Those were extras that had been completed?

A. Yes.

Q. You left those in the assets? A. Yes.

Q. You did not ascertain whether or not the total amount of material that had been purchased from the Standard Sanitary and formed a part of the accounts payable in the liability column had been purchased and delivered to that job on the 30th of April? [436]

A. I think it would have been impossible to do so.

Q. You didn't examine any of the invoices or seek any further information on that?

A. No, sir.

Q. So that you did not know at the time you deducted that \$1,968 from the assets, the contracts receivable, whether that sum represented any part of the material that had been delivered by the Standard Sanitary Company for that job, do you?

A. No.

Q. And the same situation is true in regard to the F. B. Schwentker job in the sum of \$2,634; you just took that amount that remained to be paid and deducted that without ascertaining whether that \$2,634 covered any portion of the amount of material that was charged against the Phoenix Plumb-

(Testimony of Jerrie Lee.)

ing & Heating Company in the items of accounts payable?

A. I handled it as I did all the contracts; knowing that unfinished contracts are not assets, I eliminated it.

Q. And the same is true of the Junior College job which showed that there was \$4,136.50 yet to be paid on the contract. A. Yes.

Q. And it is equally true on the library job?

A. Yes.

Q. In the amount of \$9,410.12? A. Yes.

Q. And it is equally true of the Harry Tritle job? \$1,551.75? A. Yes. [437]

Q. And that is the situation with the Union High School job, \$5,717.00? A. Yes.

Q. And the Bachowetz apartments reported to you as being unfinished?

A. It was reported to me, as I have stated, that it was in litigation and with a first mortgage which took precedence over the lien, and Leo Francis told me it had no value; that he would never recover anything on it.

Q. What did the books reveal on the 30th of April, 1929, that the job was finished?

A. It didn't state whether it was started or finished.

Q. But it did reveal there was a balance of \$3,700 on the contract? A. Yes.

Q. Did you attempt to ascertain whether the Phoenix Plumbing & Heating Company had stopped work of their own volition or whether they had been stopped?

(Testimony of Jerrie Lee.)

A. I was told they had stopped work on it. I didn't ask the circumstances.

Q. But on the 30th of April there had not been a question raised as to the prior mortgage or the possibility of a mortgage?

A. Not to my knowledge.

Q. And on the 30th of April they were still working on the job, weren't they? A. I don't know.

Q. You didn't know, you don't know now whether they were still working on the Bachowetz job on April 30th? [438] A. I don't know.

Q. Did you make any inquiries?

A. My inquiry was as to the value of the amount as an asset; I was told it was not completed and that they could never collect anything on it.

Q. You got that information when?

A. It must have been in September, 1929.

Q. And taking information you received at that time, as of the 30th of April, removed it from the column of assets? A. Yes.

Q. Now, if on the 30th of April, the books of the Phoenix Plumbing & Heating Company showed that they had bought this \$2,000 worth of material from the Standard Sanitary Mfg. Company and these other supply houses, and that material had been delivered and was on the premises of April, 1929, would you list these goods as an asset of one concern?

A. Yes, sir, because they would be in their possession.

Q. When they received these goods—you would list it as an asset because it was in their possession?

(Testimony of Jerrie Lee.)

A. Yes.

Q. So that the \$6,000 worth of material would appear as an asset? A. As an inventory asset.

Q. Yes, it would be on the black side rather than the red? A. Yes. [439]

Q. Isn't it a fact that instead of that material being delivered on the floor of the Phoenix Plumbing & Heating Company, they simply went through there and went to the various jobs they were working on, after it was bought from these various concerns?

A. It isn't in their possession then, and the recovery is not understood; it would be contingent on the completion of the jobs before they could realize it.

Q. When it went into these jobs it became a part of the buildings that were being constructed and became the property of the people building the building; that is true, isn't it?

A. I think so; yes. [440]

Purely from an auditor's point of view, the Phoenix Plumbing & Heating Company had a potential asset in lieu of the material delivered into the possession of other people contingent upon their performing and completing their contracts. It was a potential asset from the time they delivered the material to these people, always bearing in mind that it is contingent upon something. That is the rule auditors apply to such a situation.

I went down there August 13th to make the audit and this statement of August 17th was based on

(Testimony of Jerrie Lee.)

what I actually found there then. On that date there was a total of \$49,073.66 standing on the books of contracts receivable, with one exception—there was \$13,000 showing on the books as of the Lincoln Mortgage Company, but the cash books showed Lincoln Mortgage Company had paid, and it had never been credited.

When I made the audit of April 30th I left the amount showing the balance due on the Lincoln Mortgage Company job in contracts receivable as an asset, because the books revealed that job was completed and all that remained was the payment of the money. It was treated as an asset, as completed work.

On the 17th day of August the cash book showed it had been paid. On August 17, 1929, there were listed contracts receivable in the amount of \$49,073.66. I deducted \$3,700.00 on account of the Backowitz Apartments; \$887 on account of the City Hall job; \$1,973.50 on account of the Schwentker job; and \$3,342 on the central heating plant of the High School job; \$2,106 on the Jr. College job. The amount remaining to be paid on the High School Library and classroom job was \$9,410.12; and the Yuma High School job of \$2,719.92. [441]

I eliminated the \$3,700 on the Backowitz Apartments from the assets on the same grounds used in making the April 30th statement. That was information from one of the partners, Leo Francis, and that the job was in litigation and they did not expect to collect any money on it.

(Testimony of Jerrie Lee.)

I ascertained from the records in the Recorder's office that there was a first mortgage due November 1, 1928, and that the first mortgage would probably take over the interest of everyone there. I got the amount of the mortgage from the recorder's office, but did not write it down. I didn't examine to find if there was a foreclosure. I took the information of Mr. Francis. I did not know on August 17th whether that mortgage was being foreclosed.

I didn't find out how far the job was completed. I was told it was a worthless account. On August 17th there still remained a balance to be paid on the City Hall contract as on April 30th. I knew that City Hall job was being taken over by the Bonding Company on August 13th. I knew from the Bonding Company taking over the City Hall job that there was something wrong with it. I did not ascertain what amount of money was necessary to finish it. I didn't know what was necessary to be done to finish it. About October 5th I was informed that what was necessary to finish it would cost approximately \$700.00.

This statement was prepared as of August 17th and I attempted to prepare it on information at hand that would have been used as of August 17th. If I should prepare a statement as of December 5th I would probably use other figures. I attempted to set up only what information was available on August 17th. I knew that in preparing this statement as of August 17th there were records in the City Hall and in Lescher & Mahoney's office

(Testimony of Jerrie Lee.)

as to the status of the City Hall job. [442] The information which was received from Leo Francis and Mr. Fretz was the only information in my possession as of August 17th. The other information was not available until October 5th. I knew on August 17th the records on this job were in Lescher & Mahoney's office and in the City Hall. The Schwentker job for which I deducted from the accounts \$1,973.50 on my statement of August 17th had been taken over by the Massachusetts Bonding Company for completion the first part of August. I did not as of August 17th try to ascertain how much of the accounts payable in the amount of \$64,987.47 consisted of materials that had been delivered to the Schwentker job. That is true of the City Hall and the Backowitz Apartments. The central heating plant job for which I deducted \$3,342.70 as of August 17th was taken over by the American Bonding Company about the first part of August. I did not attempt to ascertain, what, if any, part of the accounts payable had been delivered to that job.

The Jr. College job was also taken over by the Bonding Company about the first of August—between the first and 15th of August. I deducted from the accounts receivable \$9,410.12 on account of the library and class-room job because that had been taken over by the American Bonding Company and was not treated as an asset. I made no attempt to ascertain what portion of the accounts payable was material delivered to that job.

(Testimony of Jerrie Lee.)

I deducted \$2,019.92 as of August 17th from the accounts receivable on the Yuma High School job which had been taken over by the Massachusetts Bonding Company prior to August 13th. I did not know as a matter of knowledge that the job was practically completed on August 17th.

Mr. Stuppi did not tell me at the time I was retained to make this audit for the Yuma job, that the job was practically [443] completed. I don't recall our conversation. I was employed to make a survey and report on the Standard Sanitary Manufacturing Company account of the Phoenix Plumbing & Heating Company as it affected the bonded jobs.

I got my information that the Yuma High School was an uncompleted job from Leo Francis. The fact that it was uncompleted and that it had been taken over by the Bonding Company were the reasons I did not deem it as an asset. The only reason I took out of the contracts receivable the amounts yet to be paid on them as of April 30th was because it is my contention that the work being uncompleted they were not assets.

On August 17th, 1929, I based my deduction of these amounts of \$31,960 upon the fact the work was not completed and that the Bonding Companies had taken over the control from the Phoenix Plumbing & Heating Company.

Referring to the two checks of Walter Shayab, dated April 22d, one for \$1,015 and the other for \$205, which checks are in evidence, I have two check

(Testimony of Jerrie Lee.)

stubs here for the check to him in the sum of \$1,015. One in the check book of stubs No. 2722 and also in the pocket size check stubs marked F-75. Petitioners' Exhibit No. 9 in evidence does not fit in the perforation of the check stub book No. 2722. The book check No. 9 in evidence is 3x6. The length from the end of the stub is 8 inches. It is apparent that Petitioners' Exhibit No. 9 in evidence and No. F-75 was not taken out of the large check stub book. Taking check stub which has for identification F and a serial number and applying Petitioners' Exhibit 9 in evidence to that, it appears that this check came from that stub. It is apparent that check stub 2722 is not the check stub for check F-75. In each case where the book-keeper took one of the small checks in pocket size Check book F, in serial number, and entered same check in stub in check stub book, he [444] put the check from the book stub back as a void check. I had not the bank deposit book of the Phoenix Plumbing & Heating Company, covering the period of from September 26, 1927, to June 18th, 1929. I presume this covers all the period during which there was no cash book in the records, but there is nothing to verify it. It shows entries during the 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th month of 1928. It shows nine entries in May, 15 in June, 12 in July, and shows entries for January, February, March and April of 1929. It shows twelve months in January, 1929, a number in February, 1929, and the entries continue in about the same

(Testimony of Jerrie Lee.)

ratio in April, 1929. In auditing the books of this company, I was able during January, February, March and April, 1929, to segregate some of the individual items of receipts by the Phoenix Plumbing and Heating Company. I was able to locate quite a number of the deposits and disposition of items I was interested in through the bank book of the company, but not all of them.

I did not succeed in tracing down all those I was interested in from the books of the Phoenix Plumbing & Heating Company; using that information I was able to find things in the Phoenix Plumbing & Heating Company books. I was able to trace down payments on the library job covering the period. There was no cash book; also the City Hall and central heating plant jobs.

Referring to bank book I was able on the 10th of January, 1929, to segregate out of the deposit of \$2,657.50 a payment on the City Hall job of \$1,628.25. I did not trace payments of \$2437.50 out of a deposit of \$6,428.54 on January 7, 1929, from the records of the Phoenix Plumbing & Heating Company. If there was any information available on the records of the Phoenix Plumbing & Heating Company I used it. I had a record of the Phoenix Plumbing & Heating Company deposits. I [445] did not work on the City Hall job until after the 5th of October.

The first job after I went to work on August 13 was the Schwentker and the Yuma High School and another Massachusetts Bonding Company job.

(Testimony of Jerrie Lee.)

After that, sometime in September, I went to work on jobs for the American Bonding Company, which were the library, heating plant and Junior College. When I started to work on these I traced down payments of the Phoenix Plumbing & Heating Company through the architects' record. Green and Hall were the architects on the Schwentker job. I don't recall the name of the man on the Yuma High School. Mr. Hall and Lescher & Mahoney and Fitzbaugh & Hughes were the architects. From their record I could find when payments were made on these various jobs. I made up this first statement as of April 30th, not on conditions coming up since. If I made a statement to-day as of December 6th, it would not be as of April 30th or August 17th.

Francis and Fretts were the only source of my information as to the disposition of various sums of money in August, 1929. I didn't investigate the records of the various architects at all until some time in September, on the status of any of these jobs. I investigated them after I had made my survey and report in order to verify it with the records, as I had found them in the records of the Phoenix Plumbing & Heating Company. I didn't have information as to that particular date as to those records in the various architects' offices on the status of the Phoenix Plumbing & Heating Company as of the dates these statements cover. I had the information at a subsequent date.

At the time I made these statements as of April

(Testimony of Jerrie Lee.)

30th and August 17th, I was using information as of those dates given by Francis and Fretts. I did not seek other information as of [446] those dates.

Referring to the account of Paul Gehres in the account receivable book, the first item of June 23d was for \$1.36 for gas; Jan. 17, folio 109—\$24.31; that is one of the missing books; Jan. 26, folio 109, Leo,—\$25.00; Fol. 146, \$44.86. The stubs are not here for January and February. I do not have folio 146 here.

Referring to Petitioners' Exhibit 5 for Identification, 7 in Evidence, that cash book for 1929 and part of 1928. The first entry there is on the Gehres account, June 23d. I don't know what year. It just says gas.

The next is January 17th. The account shows in the books as balanced and the entries refer to folio.

Referring to Lincoln Mortgage Company payment, I found nothing further than an entry in cash book showing credit for \$13,000. That was paid sometime in June. It is not included in the bank deposits about that date. It is not a part of the bank statement of the Phoenix Plumbing & Heating Company.

Referring to check stub No. 2474, being one of the three checks paid to Standard Sanitary Manufacturing Company, dated April 26th, that check was in the amount of \$947.94, and the entry "purchases week ending April 20." I believe the handwriting on this check stub, marked 2494, is Paul Gehres'.

(Testimony of Jerrie Lee.)

Turning to Petitioners' Exhibit No. 1 for Identification, 7 in Evidence, showing payments by Fred Noll. This shows on May 14, debit of \$24.75 paid on April account. It does not show what it was for. It is just charged to accounts payable. Examining Petitioners' Exhibit 24 in Evidence, consisting of statement a number of slips, the one of 5959 is one quart of oil, 25¢; May 24, 12 gal. gas. \$2.40, Notation "Tucson, paid by Dee Francis"; one dated May 13, 1929, \$9.50, notation "Yuma"; May 12, 1929, tire repair, 50¢, and the words "charge [447] Dee Francis." Some of these slips attached to Petitioners' Exhibit 24 have other names, such as Safford, Glendale, Prescott, etc. I made an adding machine list of the total of them. It shows items of statements consisting of gasoline, tire repair and oil covered by that period. Debits and credits show the account was paid monthly or weekly.

I found no record at all of the Callowan affair on the books. I never made any search for Callowan.

(Examination by Mr. DRAKE.)

Referring to check No. 2608, dated May 18th, payment to Crane Company of \$1000, stub 2608, dated May 9, 1929, for check payable to Crane Company, is marked "accounts payable" \$1,000. The check notation is May 8th, by check 2608, \$1,000, and is applied against accounts payable. That is all I have been able to discover relative to that.

Stub 2869, dated June 21, 1929, payable to Crane Company, \$500.00, accounts payable, assignment

(Testimony of Jerrie Lee.)

due on Marana School. Assignment is abbreviated "assg." The notation on that is in the cash book in the same form.

(Examination by Miss BIRDSALL.)

I testified the other day that the check stubs of the Phoenix Plumbing & Heating Company, started with No. 301, March 24, 1928. There seems to be nothing previous to that time. The check stubs from December 11, 1928 to April 13, 1929 are missing.

Turning to D. L. Francis account on the books, there is no credit on the account of D. L. Francis, and there is no way of determining what, if any, credit he had. The account is set up merely as a list of liabilities of D. L. Francis, \$842.32, April 26 to June 4, inclusive. There is no way of determining the true state of the account of D. L. Francis with the Plumbing Company. The only information I have found [448] on the books of any amounts of D. L. Francis for money turned into the Arizona Garment Company would be the check stubs or cancelled checks and that merely stated where the money went, whether it went into the factory. There is nothing to indicate that it was a charge against D. L. Francis.

Of the payments made to Joe Thomas, one loan account is marked D. L. Francis, through the company to Joe Thomas. That account was read into the record the other day, and showed certain amounts purporting to have been loans made by D. Francis from his insurance. From the records

(Testimony of Jerrie Lee.)

there is no way of tracing through that account to ascertain whether these loans were actually made by D. L. Francis and put into the Phoenix Plumbing & Heating Company. The dates of these loans are April 22 "forward" \$241.00; April 23, cash \$5.00; April 27, U. S. Government Insurance loan, \$275.00; \$526.82, May 15; May 22 Southern Surety Company, sickness insurance, \$40; amount of \$275.00 April 27 is taken in by the Phoenix Plumbing Company as a cash receipt on account of loan from D. Francis.

On page 6, line 14 of Petitioners' book 6 for Identification, 7 in Evidence, taken into cash for Phoenix Plumbing & Heating Company \$526.82, marked U. S. Government insurance, D. Francis; a loan from D. Francis on page 8, line 5, item appears of Southern Surety Company taken into cash \$50, loan from D. L. Francis; page 2, line 7, \$5.00, taken into cash as loan by D. Francis; item of \$241 doesn't appear in cash book.

The account of Joe Francis covering 12 payments made to him for a short period covers period from May 1, 1929, to June 5, 1929.

There is another account on which there is a credit to Joe Francis of \$500.00 on May 19th; on page 4, line 29 is an item received from Joe Francis as receipt for \$500 given in credit on loan account, \$500.00. There is nothing to show how [449] that came in. The cash book indicates that it was put in the bank account.

Examining the account on the other side on May

(Testimony of Jerrie Lee.)

16th, there was a check of \$19.87 returned unpaid. The \$500 payment was taken in on May 10; the check was returned unpaid on May 16th. The \$10.87 check was given on April 30th. I have no way of tracing whether that was a check given on the same bank as the \$10.87.

Referring to deposit book 6 in evidence, Petitioners' Exhibit 14, as to whether from my examination I could state whether all transactions of the Phoenix Plumbing & Heating Company during the period from December 1928 to April 30, 1929 went through the bank from my examination indicates that at least one item of \$4000 did not go through this book. It went into the bank book. One transaction as I recall at this time did not show on the book. It is true that the bank book is not a complete record of the cash transactions of the Phoenix Plumbing & Heating Company over that period, as to at least one instance. I never checked any others. The deposits in the bank book go to June 18th. Between June 18th and August 17, 1929, there were no deposits whatever as shown by the books. The book is not full.

The transactions between June 5th and June 10th shown on the books of the Phoenix Plumbing & Heating Company of \$13,000 to the Lincoln Mortgage Company was not deposited in the bank at all. The cash book indicates the payment, but there is no record in the deposit book.

I was not able to tell from the records of the Phoenix Plumbing & Heating Company whether the other

(Testimony of Jerrie Lee.)

payments at a previous or subsequent time were made to the Phoenix Plumbing & Heating Company. I did not go through the bank book at all; the bank statements and records would only show a record of [450] such items as were deposited.

I did not find from the records of the Phoenix Plumbing & Heating Company which I examined, duplicate deposit slips covering the deposits made in the bank showing what the items were. I remember seeing one or two, but no complete file of them. I saw those in the office of the Receiver. There was not a complete record of deposit slips from December, 1928, to June, 1929. The general ledger that is missing is one that extends so far as I am able to determine from December, 1927, to April 22, 1929, and the cash book which is missing is from June 1, 1928, to April 22, 1929. The old cash book ends the latter part of May, 1928, and the new one begins April 22, 1929.

There is no liability side shown on the general ledger from which I have testified.

Referring to the accounts of the Standard Sanitary Manufacturing Company that was carried on the books of the Phoenix Plumbing & Heating Company in one general open account as accounts payable. When credits were given for payments made to the Standard Sanitary Company they were charged against that general account. As shown on the books of the Phoenix Plumbing & Heating Company payments were never credited against any particular job of the Standard Sanitary Company.

(Testimony of Jerrie Lee.)

Among the checks which I have testified to, were those for weekly payments made during April and May, 1929. The stubs indicate that it was for purchases during the week but there is nothing to indicate what job the material bought and paid for by that check was delivered to. The check for \$947.94 was included in the credits given the Standard Sanitary Manufacturing Company previous to the statement made as of April 30. From a statement found in the files but not from the book record, I can give the amount due and owing by the Phoenix Plumbing & Heating Company to the Standard Sanitary Manufacturing [451] Company on June 21, 1929. This statement shows the balance due on January 1, 1929 to the Standard Sanitary Manufacturing Company was \$24,460.49. On February 1, 1929, the amount due was \$30,670.79. On March 1, \$38,042.20. On April 1, the amount due was \$43,582.25. The amount due on August 17, 1929, was \$39,552.62. That amount is included in the liabilities shown on August 17, 1929.

Referring to my testimony in regard to my reasons for eliminating the \$3,700 item on the Bachowitz account, I did have information that a mechanic's lien was filed during June 1928. The information I had was from Fretts and Leo Francis that the account was of no value. They told me the reasons why and I searched the record in the book of mortgages at the Court House. That is about the extent I went into it. According to the

(Testimony of Jerrie Lee.)

records that have been introduced here the mechanic's lien had been filed a year before that.

In the statement I made as of April 30th and the statement as of August 17th, all amounts shown on the contracts receivable book of payments made on the contracts were credited. I verified these amounts in the architect's office some time in October. I used to the best of my knowledge and belief the information with reference to the credits due on the contract.

(Examination by Mr. DUFFY.)

With reference to the missing check stubs and the search I made for them when I went down to get the records of the company on August 13th, the records were in boxes scattered throughout the building. There were 3 or 4 rooms. We searched every room and found records in every room, mutilated checks, etc.

Later when Mr. Thalheimer took over the records, I went down with him and we made a search of the premises in addition to my own search, in the presence of Mr. Fretts. There is, I think, another account for another Francis in the books. There in an accounts receivable for another employee name Leo Goldman, [452] dated May 1, 1928 for \$2.25 which is in balance.

The \$4,000 which I testified to did not go through the bank book, was not in the amount payable on the Asylum job. There was no cash book for that period. The Asylum job does not appear to have gone through the cash book.

(Testimony of Jerrie Lee.)

I testified on redirect examination that one amount of \$4,000 did not go through the bank book. I traced that through the contracts receivable record. If a concern kept a full set of books, including a general ledger, inventory account, etc., if they handled cash without it appearing in any of those records, they could never get a balance of their accounts.

In going through the books of the Phoenix Plumbing & Heating Company, I attempted to trace down matters for various clients. There are some things I have looked for and couldn't find. In order to give my clients a pretty correct status of their question, I had to go to outside information.

There were no payments to the Standard Sanitary Manufacturing Company during January or February. There was a payment on March 14th of \$6,000, check No. 2185, and on April 13, check 2384 for \$2,500.

(Examination by Miss BIRDSALL.)

There were no other payments during April. The others appear in May. [453]

TESTIMONY OF HOWARD O. WORKMAN, FOR PETITIONING CREDITORS.

Direct Examination by Miss BIRDSALL.

My name is Howard Workman. I have lived near Phoenix 8 years. Am acquainted with Walter Shayab who stays in Phoenix part of the time for his health. He lives in Boston. He is here

(Testimony of Howard O. Workman.)

now living at the Jefferson Hotel. He is here for his health and has no business.

Referring to Petitioners' Exhibit No. 9 in Evidence, check made to Walter Shayab, signed Phoenix Plumbing & Heating Company, dated May 19, 1929, endorsed by Walter Shayab; that is my endorsement on the check. I borrowed \$1,500 from Mr. Shayab and this check was part of it. I think probably Mr. Shayab had just gotten that check and he did not take it to the bank. I don't remember just what the balance was, but I think it was around \$1,500 and that check was a part of it. I do not know the circumstances of his receiving the check from the Phoenix Plumbing & Heating Company. I only know D. L. Francis when I see him. Mr. Shayab is an Assyrian and I have known him about 6 years. He and I are friends and I borrowed the money from him. I don't think he makes a practice of loaning.

I deposited the check at the Valley Bank, and it went through my account. I don't know for what the Phoenix Plumbing & Heating Company gave Mr. Shayab this check. I had not been negotiating my loans with Mr. Shayab very long before this check was given me. I could tell from my deposit book when I deposited the check.

Mr. Shayab can be located at the Jefferson Hotel. He just came back a few weeks ago. I am here for my health. I borrowed the money to buy some land out here and put a few cabins up for rent. My place is on West Van Buren Street. [454]

(Testimony of Howard O. Workman.)

(Examination by MASTER.)

I didn't see this check made out. When I saw it, it was endorsed by Walter Shayab. I did not see him endorse it. To the best of my recollection no one else was present when I received this check except Mr. Shayab. This business occurred in the lobby of the Jefferson Hotel.

I do not know Mr. P. C. Gehres. I did not know that that name was on the check. I don't remember who endorsed it but I thought it was Mr. Francis. I never noticed Gehres' name before.

(Examination by Miss BIRDSALL.)

I never had any conversation with Mr. D. L. Francis about the matter. I am familiar with Mr. Shayab's signature and this signature looks like his. This one is new to me (indicating Paul C. Gehres' signature). The name, Walter Shayab, in the main part of the check looks a little like Mr. Shayab's handwriting. Of course the body of the check is made by Francis. It seems that the name is written in in a different handwriting. I never heard tell of that man (indicating Mr. Gehres' signature).

I deposited the check in the Valley Bank and didn't check on it that very day, but when I did check on it it had gone through. I never gave a note to Mr. Shayab for it. This money went to buy a lot and I put in quite a little myself and I am going to get another loan on it which will go ahead of Mr. Shayab, so I can go ahead and get a second mortgage. That was our understanding.

(Testimony of Howard O. Workman.)

I have never paid him anything on the \$1,500 I borrowed and at the present time he holds no mortgage. I will give him a second mortgage if he wants it. I do not know whether he is a man of means. He has no family. I think he was a plumber in Boston. I don't think he had any connection with the Phoenix Plumbing & Heating Company. He never mentioned to me the [455] reason for having a check from the Phoenix Plumbing & Heating Company.

(Question by the MASTER.)

I have known him about 6 years and I had other business relations with him. I have received letters from him but I haven't kept them.

TESTIMONY OF W. K. FETTER, FOR PETITIONING CREDITORS.

My name is W. K. Fetter. I am manager of R. G. Dunn Company. I have been in Phoenix since March 1, 1919. In my position as manager of R. G. Dunn & Company I am accustomed to receive financial statement from different firms in Phoenix.

I have brought with me the last statement made by the Phoenix Plumbing & Heating Company to R. G. Dunn & Company. I don't know the date of it. It was mailed August 14, 1928, on the last statement, but a statement that they made. This is the original statement and the envelope in which it was received.

(This statement received in evidence marked Petitioners' Exhibit 26 in Evidence, with the understanding that a copy may be later substituted for the original in the record.) [456]

B.-522.

PETITIONERS' EXHIBIT No. 26.

In Evidence.

12-5-29.

STATEMENT AS A BASIS FOR CREDIT.

MEMO TO

R. G. DUN & CO.

THE MERCANTILE AGENCY.

On the Financial Condition of The Phoenix Plumbing & Heating Co.

Location—316 N. 6th Ave. Phoenix, County of Maricopa, State of Arizona.

Business—Plumbing & Heating Contractors & Engineers.

Date to which all the items of the statement relate—
June 1, 1928.

Full Names of All Partners:

Mr. D. L. Francis. Age, 34. Married or
Single—Married.

Mr. Lyon Francis. Age, 23. Married or
Single—Married.

Mr. Leo Francis. Age, 22. Married or
Single—Married.

How long in business here? 11 months. Whom do you succeed, if anyone? Wm. Remsbottom. Where from, Town and State? Fort Smith, Arkansas. Former occupation? Heating &

Plumbing Engineers. Ever fail? No. If so,
when and where? —————.

ASSETS (When no figures are entered use the
word NONE).

Merchandise on hand at cash value.....	\$ 6,042.95
Outstanding accounts at realizable value.	2,642.78
Notes receivable at realizable value.....	223.40
Cash on hand,) Both	
Cash in Bank).....	1,684.38
Machinery, Fixtures, etc.....	2,244.75
Deposits on plans & bids.....	1,138.00
Due on contracts.....	14,300.73
	<hr/>
Total available assets.....	\$28,276.99

REAL ESTATE (Describe, locate and value
separately, and in whose name held).

NONE.

Total value of real estate.....	
Mortgages or amount unpaid thereon.....	
Equity in real estate.....	
Total worth in and out of business.....	

LIABILITIES.

For merchandise not due (open account)	7,195.36
For merchandise past due (open account)..	None
For merchandise (notes payable).....	None
Loans from bank.....	4,000.00
Loans from friends or relatives.....	None
Int. Cont. pay.....	1,845.08
Cap. Investment Acct.....	15,236.55
	<hr/>

\$28,276.99

Is the statement of value of stock on hand made upon the basis of an inventory actually taken? And if so, on what date? Actual inventory, May 31, 1928.

What, in your opinion, is the total amount of your assets and of your liabilities as they are at the date of signing this statement? Total assets, \$25%, over the above.

Total liabilities, \$25%, over the above.

Amount of chattel mortgages, if any, on stock or fixtures—\$ None.

If any of the above accounts are pledged state the amount—\$ None.

Are there any existing liens on personal property not mentioned above? If so, what? Conditional sales contract on fixtures and machinery. [457]

B.-522.

Page 2.

PETITIONERS' EXHIBIT No. 17.

For Identification.

Contingent liabilities upon bills of exchange, endorsements, guarantees, etc. \$ None. Annual sales (estimate)—\$120,000.00. Annual Rent—\$636.00. Annual Expenses—\$4,500.00.

Do you keep books of account of the business? Yes. If so, name them—Cost system, cash journal, general ledger, contract and accts. Rec. ledger.

Fire protection. State its general nature—public fire department, sprinkler system, fire extin-

guishers, night watchman, etc.—Watchman and public Fire Dept.

INSURANCE: On Merchandise—\$1,800.00. On Machinery and Fixtures—\$500.00. On Buildings—\$ None.

Did you ever suffer a fire loss? No. If so, where and when?

Did fire originate on your premises? ———

Do you carry employer's liability insurance? Yes.

Date of signing statement August 14, 1928.

PHOENIX PLUMBING & HEATING,
PAUL E. GEHREN,
Cashier.

B.-522. Petitioners' Exhibit No. 17 for Identification. [458]

Back of No. 26:

IMPORTANT.

Kindly give the names of a few houses from whom you make your largest purchases.

Name	Street Address	City and State	Amount Owing
Standard San. Mfg. Co.	447 E. Jefferson	Phoenix, Arizona	Current
Crane Company	233 S. 1st Ave.	Phoenix, Arizona	Current

Bank with Commercial National Bank of Phoenix, Arizona.

TRUE COPY OF ENVELOPE.

Phoenix Plumbing & Heating Co.	Postal cancellation
316 North Sixth Avenue	Phoenix
Phoenix, Arizona.	Aug. 14
	1. 5:30 PM
	1928
	ARIZ.

R. G. DUN & COMPANY.

Heard Building.

Phoenix, Arizona.

(Stamp)

(Testimony of Frank McNichol.)

This envelope contained statement of Phoenix Plbg. & Htg. Co., Received by me 8/15, 1928. (Signature) Z. [459]

TESTIMONY OF FRANK McNICHOL, FOR
PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

My name is Frank McNichol. I am cashier of the Commercial National Bank. I have held that position about a year and one month. I came to Phoenix from Prescott about the middle of October, 1928, and at that time had a conversation with him as to who constituted the Phoenix Plumbing & Heating Company. Dee Francis and myself were present at that conversation. I called him in there to find out, to get acquainted with the business. The first thing I asked him was if it was a corporation. He says it wasn't, that he and his two brothers were partners. That he handled the financial work and the estimating and that the other two members were practical plumbers and *supervised construct*; along the lines of organization, that was about all he said.

I think he mentioned salaries. Said they paid each one a salary and building profits. I had subsequent conversations with him each time he made application for a loan, and we went over these statements he would hand me. I do not recall any conversation in regard to the membership of the firm except the one I have mentioned. I definitely remember when he first came in in October and estab-

(Testimony of Frank McNichol.)

lished the fact that he and his brother were the Phoenix Plumbing & Heating Company and that was later confirmed by Dunn and Bradstreet reports.

Referring to Petitioners' Exhibit No. 18 for Identification that is a statement that was handed to me by Dee Francis for the purpose of trying to influence us to give them further loans. It was handed to me soon after February 15, 1929.

(Statement is received in evidence marked Petitioners' Exh. 27 in Evidence.) [460]

B.-522.
 PETITIONERS' EXHIBIT No. 27.

In Evidence.
 PHOENIX PLUMBING & HEATING COMPANY.
 Phoenix, Arizona.

Work in Progress and Finished.
 February 15th, 1929.

Job.	Contract Amt.	Paid.	Complete %	Bal.	Due.
Arizona Grocery Co.....	105.00	—	60%	105.00	
Arizona Guarantee Mortgage Co.....	746.75	—	Not started	746.75	
Bachowitz Apartment.....	3,700.00	—	65%	3,700.00	
<i>ckeye</i> Arizona School.....	5,635.50	5,462.50	Finished	173.00	
State Insane Hospital	6,841.00	3,580.00	60%	3,261.00	
Phoenix City Hall	22,374.00	12,375.00	80%	9,999.00	
Episcopal Deanery	2,563.90	2,325.00	Finished	238.90	

Job.	Contract Amt.	Paid.	Complete	Bal.	Due.
			%		
Washington School Building	695.00	—	50%	695.00	
Dan Campbell Residence	1,530.00	—	50%	1,530.00	
H. H. Green New Residence	1,723.97	1,700.00	95%	23.97	
H. H. Green Old do.	469.00	—	60%	469.00	
W. W. Knorpp Residence	1,640.40	1,230.30	90%	410.10	
Mr. Dowell Residence	2,540.00	—	40%	2,540.00	
E. J. Bennett Residence	3,898.30	2,200.00	80%	1,698.30	
Lincoln Mortgage Co. Balance due on 41 cottages now finished					15,435.92
Mesa Bank Building	5,228.00	1,582.50	75%	3,645.50	
Patterson Residence	306.54	264.00	Finished	42.54	
Grace Lutheran Church	594.50	297.25	Finished	297.25	
Phoenix High School Stadium	16,116.50	15,469.90	Finished	646.60	
Phoenix High School Library Bldg.	17,822.00	2,437.50	40%	15,384.50	
Phoenix High School Heating Plant	27,819.00	12,580.00	85%	15,239.00	

Job.	Contract Amt.	Paid.	Complete %	Bal.	Due.
Phoenix Junior College Bldg.	8,424.00	3,787.50	70%	4,636.50	
Dr. Schackelford Residence	564.00	—	50%	564.00	
Tolleson Arizona School Bldg.	3,871.00	2,150.00	Finished	1,721.00	
Mel Fickas Residence	1,069.00	—	50%	1,069.00	
Marcus B. Kelley Residence	648.75	—	50%	648.75	
Linn Lockhart Residence	4,461.00	1,937.50	80%	2,523.50	
H. Keyfavar Residence	1,280.00	—	60%	1,280.00	
Hoggan Residence	346.75	—	50%	346.75	
Frank Bowman Residence	237.00	—	60%	237.00	
Joe Samardo Residence	140.00	40.00	95%	100.00	
Getney & Snell Residence	336.75	—	60%	336.75	
Perry & Taylor Residence	491.00	—	Finished	491.00	
		Unpaid Balance			\$90,235.58

(Testimony of Frank McNichol.)

Mr. D. L. Francis, Mgr. aided by figures from the wholesale houses on a very liberal estimate that it will require the sum of \$48,550.00 to cover all MATERIAL & LABOR necessary to complete all of the above work.

Signed—PAUL C. GEHRES.

Phoenix Plumbing & Heating Co.

The above is a true and correct statement of the work in progress and completed this Fifteenth day of February, 1929.

B.-522. Petitioners' Exhibit No. 18 for Identification. [461]

At the time this statement (referring to Petitioners' Exh. 27 in Evidence) was handed me, I had requested them to bring in a list of moneys that was due to them and this was brought to me in response to my request. After that statement was given to me I had conversations with D. L. Francis as to whether any of these contracts had been assigned, and Mr. Francis said that no contracts had been assigned. He repeatedly made that statement to me. Every time he brought a list in I would ask him if any had been assigned, but he would always say no.

Referring to Petitioners' Exh. 27 in evidence, among other statements, there is a contract of the Lincoln Mortgage Company after showing an amount due of \$15.435. At no time subsequent to the date of that statement did I have any notice or knowledge that that contract had been assigned. During the month of May, 1929, I had a conversation with D. L. Francis in regard to the assign-

(Testimony of Frank McNichol.)

ment of contracts. I remember one time very distinctly I met D. Francis as I was coming out of the bank. It was the day before they got the last loan from the bank and he said he needed a thousand dollars. I told him he would have to take it up with Mr. Norris, the president of the bank. I asked him if he still had the money coming on the Court House job and he said yes. I said, "Were any of them assigned?" and he said no. I said I would like him to cover them with some kind of security and asked for assignments of the various jobs. When I got back to the bank a loan of \$1,000 had been made to him by another officer of the bank.

(Examination by Mr. PHLEGAR.)

When I first came in contact with D. L. Francis I asked him if the business was incorporated and he said no. I asked him what it was and he said it was a partnership of three brothers. I do not recall whether I asked him for a financial statement at that time, but I did soon afterwards and it was [462] furnished.

The statement furnished should show the assets and liabilities of the Phoenix Plumbing & Heating Company, the cash on hand and contracts under construction. After that when we made loans we asked him several times for lists of the amounts of money due to him so that we could see where he would pay his loans from. All of the statements he furnished dealt with the Phoenix Plumbing business, as it was then being conducted by the Phoenix Plumbing & Heating Company.

(Testimony of Frank McNichol.)

I never requested a statement of the personal holdings of any of the individual members.

The credit which we extended to the Phoenix Plumbing & Heating Company was extended on the statement and representation made by D. L. Francis as to the actual operations of the company.

TESTIMONY OF O. E. SCHUPP, FOR PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

My name is O. E. Schupp. I am attorney for Leo Francis, one of the bankrupts and the Phoenix Plumbing & Heating Company. As such attorney I filed schedules of admission of willingness to be adjudged a bankrupt by Leo Francis. I prepared these schedules for Leo Francis as his attorney. Those schedules were filed about the 18th or 19th of September and were made up as affecting the business of the Phoenix Plumbing & Heating Company as of August 17, 1929.

(Examination by Mr. DUFFY.)

I began the preparation of those schedules sometime around the 17th of August, probably five or six days afterwards and obtained the information from the books and papers and from information Leo Francis gave me. The books were in the hands of the Receiver and I had access to them.

TESTIMONY OF J. G. WAGONER, FOR PETITIONING CREDITORS.

J. G. WAGONER (As representative of Crane Company, appearing in response [463] to subpoena served on Mr. Benner as manager of Crane Company).

(Examination by Miss BIRDSALL.)

My name is J. G. Wagoner. I am cashier and bookkeeper and credit man for Crane Company. In response to subpoena served upon Mr. Benner I have produced here certain records of Crane Company, being the original accounts receivable, ledger sheets showing various debits and credits and certain assignments made by the Phoenix Plumbing & Heating Company to Crane Company.

I have with me assignments to Crane Company dated June 5, 1929 (marked Petitioners' Exh. 19 for Identification). The pencil memoranda on that was put on after it was given. (Assignment received and marked Petitioners' Exh. 28 in Evidence.) [464]

B.-522.

PETITIONERS' EXHIBIT No. 28.

In Evidence.

Phoenix, Arizona, June 6, 1929.

For value received, the undersigned hereby sells, transfers, sets over and assigns to Crane Co. all his right, title and interest in and to his book accounts and claims of every nature against the fol-

lowing named persons in the following named amounts, to wit:

(Pencil Notation)

(\$1000.00 due from E. J. Bennitt, Country Club Drive, Phoenix, Ariz.

(800.00 due from Harry Tritle, No. Alvarado St., Phoenix.

Go after. not legible 24465

(500.00 due from O. P. Johnson, Verde Lane, Phoenix.

(800.00 due from Frank B. Schwentker, Alvarado & Monte Vista, Phoenix.

~~500.00 due from Marana, Teacherage Building, Marana, Arizona. (Pencil Notation) Pd. Jan. 21.~~

~~500.00 due from Dan Campbell, W. Cambridge St, Phoenix. (Pencil Notation) Paid 7/17/29.~~

225.00 due from James Barnes, ~~1300~~ 1606 Block W. ~~Latham~~ St., Phoenix Lynwood

400.00 due from O. R. Bell, 917 No. 8th St., Phoenix.

) 400.00
) 196.01 Pr.
) 7/31/29
) 203.99 Bal.
) due.

PHOENIX PLUMBING & HEATING CO.
By LEO FRANCIS,
Owner.

(Testimony of J. G. Wagoner.)

Approved:

CLIFF FRYBERGER,

Manager.

We, the above named, hereby consent to, accept and agree to the above named assignment.

Accepted by E. J. Bennett for the amount finally found due but not to exceed one thousand dollars. June 2/1929.

E. J. BENNETT.

(Pencil Not.) Jas. W. Barnes. Amount \$225.00. 6/9/29.

Petitioners' Exhibit No. 19 for Identification. [465]

This assignment was drawn in Mr. Townsend's office. I had nothing to do except to take Mr. Francis up to Townsend's office. Mr. Francis had talked to Mr. Benner about it.

Referring to the original books of entry, as to payments made under this assignment, we received on the assignment of the Marana School job \$500 on June 21st. We received \$500 on the Campbell assignment on July 6th, and we received \$198.01 on the Bell assignment. That is the last assignment there. It was dated August 1st. Those are all the payments received on those assignments.

Crane Company received another payment on account of the Phoenix Plumbing & Heating Company after June 6, being \$804.72 on July 6 from the McGinty Construction Company. That payment was made direct and did not come through the Phoenix Plumbing & Heating Company. I cannot say whether any credit of that amount is

shown on the books of the Phoenix Plumbing & Heating Company.

Mr. Fryberger gave Mr. McGinty directions to pay that direct. It was on the Safford Hotel job and it was their own arrangement, not ours.

On July 20th we received \$81.70, the payment being made direct to Crane Company by Mrs. Harry Tritle. This was not made under any assignment. We had an assignment of the Tritle account, but this had nothing to do with it. When they finished that job, it seems they wanted a water-heater. They called up about it and wanted it sent down there. They asked if we would send it out and we did send it out. It was a direct deal with Mrs. Tritle, but we did not think of doing anything without their permission. Mr. Fryberger knew all about it. We never received any payments at all on this assignment of the Harry Tritle matter, nor any payments on the E. J. Bennitt assignment. I don't know whether the Bennitt amount has been paid. I went [466] to Mr. Benner about it and he said there was some question as to the amount of money due, and it was understood that if anything was due it should be paid.

I don't know whether the Harry Tritle job has been paid for to the Phoenix Plumbing & Heating Company. We never tried to collect this \$800.00.

I have testified to all the payments received by Crane Company since June 6th, both after these assignments and otherwise.

Referring to my records as to the payments received by Crane Company between April 17, 1929,

(Testimony of J. G. Wagoner.)

and August 17, 1929, on May 9th there was a payment of \$1,000 on account. That is the only cash payments we had received up to the time of these other payments. We had a waiver of lien on these assignments to the amount of assignments from the Standard Sanitary.

(Witness produces waiver which is received in evidence marked Petitioners' Exh. 29 in Evidence.)
[467]

B.-522.

PETITIONERS' EXHIBIT No. 29.

In Evidence.

12-11-29.

Letter Head.

STANDARD SANITARY MFG. CO.,

447 E. Jefferson Street,

Phoenix, Arizona.

June 7, 1929.

To Whom it May Concern:

After reviewing assignments given by Phoenix Plumbing and Heating Company to Crane Company, covering the following jobs, in amounts as stated, to wit:

\$1000.00 due from E. J. Bennett, Country Club
Drive, Phoenix, Arizona.

800.00 due from Harry Tritle, No. Alvarado St.,
Phoenix,

500.00 due from O. P. Johnson, Verde Lane,
Phoenix.

800.00 due from Frank B. Schwentker, Alvarado
& Monte Vista, Phoenix.

(Testimony of J. G. Wagoner.)

500.00 due from Marana Teacherage Building,
Marana, Arizona.

500.00 due from Dan Campbell, West Cambridge
St., Phoenix.

225.00 due from James Barnes, 1300 Block W.
Latham Street, Phoenix.

400.00 due from O. R. Bell, 917 N. 8th Street,
Phoenix.

We do herewith release our rights, title and interest in the above accounts, in the amounts as stated, and do herewith relinquish any and all lien rights we may have in said jobs, except in any amount above that which is entered against such jobs in this instrument.

Yours truly,

STANDARD SANITARY MFG. CO.,

By I. L. NIHELL.

I. L. NIHELL.

ILN:HL.

B.-522. Petitioners' Exhibit No. 20 for Identification. 12-11-29. [468]

We had no other waivers of liens or consent to assignments from the Standard Sanitary or any other creditor in our possession.

Referring to our records the amount due to Crane Company on August 17, 1929, from the Phoenix Plumbing & Heating Company was \$3,503.24. At the present time the amount due Crane Company is \$3,467.47. There were a couple of credit memorandums after the time of these payments which makes the difference shown.

After June 6, 1929, the dates of these assignments

(Testimony of J. G. Wagoner.)

no material was furnished on credit to the Phoenix Plumbing & Heating Company, except some material on order that was delivered a few days after the order. The last was on June 17. That was the heater I spoke of to Mrs. Tritle.

Our account with the Phoenix Plumbing & Heating Company was carried as an open account and materials were not credited to the various jobs but credits made when they were paid.

(Examination by Mr. DUFFY.)

At the time the payment was made by the McGinty Construction Company nothing was said by Mr. McGinty as to who was doing that job. He called me up to come and get the job.

Mr. DRAKE.—On behalf of Crane Company I now desire to ask leave of court to withdraw the answer on behalf of Crane Company, objecting to the adjudication herein.

The MASTER.—The motion is granted upon condition that Crane Company pay its proportion of costs to the date of this proceeding, as shall later be legally determined and fixed by the court. (Petitioners' Exh. 10 for Identification, Letter of Southern Surety Company, is received in evidence and marked Petitioners' Exh. 30 in Evidence.)

B.-522.

PETITIONERS' EXHIBIT No. 30.

In Evidence.

12-11-29.

Letter Head.

SOUTHERN SURETY COMPANY OF NEW
YORK.

1201 National City Bank Building,

Los Angeles, Calif.

August 8, 1929.

Phoenix Plumbing & Heating Co.

316 North Sixth Ave.,

Phoenix, Arizona.

Atten: Mr. Fryberger.

Re: Bond 453393—Phoenix Plumbing & Heating
Company to City of Phoenix—Plumbing con-
tract in New City Hall Building at Phoenix—
LA #1578-28.

Gentlemen:

With reference to the above contract, we enclose
copy of letter dated August 6th from Attorneys
Armstrong, Lewis & Kramer, which is self-explana-
tory.

We had hoped that you would be able to work out
of your difficulties without any of the creditors mak-
ing formal demand for the payment of their ac-
counts. I wish you would write me in some detail
what progress you have made since my talk with
you in Phoenix, and whether you think it would be
possible to reach a satisfactory adjustment with the

Standard on some basis by which this creditor will look to you for payment.

You might have a talk with the Standard manager before writing me. I shall hope to hear from you by the middle of next week.

Yours very truly,
L. D. BARTLETT,
Claims Manager.

LDB:MB.

ENC.

Petitioners' Exhibit No. 10 for Identification.
[470]

B.-522.

PETITIONERS' EXHIBIT No. 30.

In Evidence.

12-11-29.

“COPY.”

ARMSTRONG, LEWIS & KRAMER,
Phoenix, Arizona.

Southern Surety Company of N. Y.

Los Angeles, Calif.

Re: City Hall Plumbing Contract.

Phoenix Plumbing & Heating Co.

Gentlemen:

We are counsel for the Standard Sanitary Manufacturing Co. with offices in Phoenix, and we have before us the figures showing the status of the City Hall job.

There remains to be paid on the contract by the City of Phoenix to the Phoenix Plumbing and Heating Company the sum of \$8,700 and some odd dollars. The unpaid material bills for materials

furnished and now installed in the City Hall, standing on the books of the Standard Sanitary Manufacturing Co. against the Phoenix Plumbing and Heating, amount to the sum of \$16,918.74.

Under the terms of the contract and bond of the Phoenix Plumbing and Heating Company which your company underwrote, your company is liable for the payment of this amount. There appears no possibility of the Phoenix Plumbing & Heating Co. paying the difference between the amount due on the job and the amount due for materials furnished therefor; hence, we are compelled to make demand upon you for the payment of the \$16,918.74 due for materials installed in the building.

We would appreciate your early consideration of and decision, on this demand.

Yours very truly,

ARMSTRONG, LEWIS & KRAMER.

By FRANK J. DUFFY.

Petitioners' Exhibit No. 10 for Identification.
[471]

(Petitioners' Exhibit 21 for Identification was received in evidence, marked Petitioners' Exh. 31 in Evidence.) [472]

B.-522.

PETITIONERS' EXHIBIT No. 31.

In Evidence.

12-11-29.

To the Board of Trustees of Phoenix Union High
School District, Maricopa County, Arizona.

Gentlemen:

On the 18th day of October, 1928, I entered into

a contract with your District wherein, among other things, I agreed to the satisfaction and under the direction of your District and Lescher & Mahoney, the Architects for the District, to provide all the materials and perform all the work mentioned in the specifications and as shown upon the drawings prepared by said architects for the installation and completion of the plumbing, heating and ventilating in the library and classroom building located on property belonging to the District, bounded by Sixth, Seventh, Taylor and Van Buren Streets, in the City of Phoenix, Arizona, and for the faithful performance of which contract the District agrees to pay me the sum of \$18,828.00 as follows:

\$10,330.00 for the installation of the heating and ventilating and \$8,498.00 for the installation of the plumbing, payments to be made upon estimates and certificates of the architects upon the 1st and 15th days of each month for seventy-five per cent of the cost of materials furnished on the ground or placed in the building and labor performed thereon, the final payment of twenty per cent reserved from previous estimates or installment payments to be made when the building is completed and finally accepted by the District, and upon which contract there has been paid me up to this date approximately \$9,000.00. I wish to advise you that owing to unforeseen financial difficulties I have fallen in, the Standard Sanitary Manufacturing Company at Phoenix, Arizona, who has been furnishing me the materials to perform said contract now refuses to furnish me further materials for use in the completion of the contract, and in as much as I cannot ob-

tain the necessary materials from any other source to fulfil the contract with I have appealed to the American Bonding Company of Baltimore, the surety on my bond for the performance of said contract, to financially assist me in securing the necessary materials to complete the contract and in the circumstances, the American Bonding Company of Baltimore as the surety on my bond has consented to secure for me the materials necessary to complete the contract, as well as money necessary to pay the labor to properly install said materials provided I protect said surety for the materials which it will furnish me and the moneys to be paid by it for the labor to install said materials under the contract.

Therefore, in order to perform said contract and complete the same to the satisfaction of your District and said architects, and to protect said surety, I hereby authorize and empower you to pay over to the American Bonding Company of Baltimore, a corporation, the surety on my bond for the fulfillment of said contract, all moneys now due me or to become due to me under the terms of said contract and which will amount to approximately \$9,000.00 when said contract is completed, and I hereby authorize and empower said American Bonding Company of Baltimore to receipt for said [473]

Board of Trustees of Phoenix

Union High School District—2

moneys in my name to your District and when so receipted for by said American Bonding Company of Baltimore it shall be deemed as my receipt therefor, and I hereby waive any and all claim against your District for said moneys or any part thereof

which may be paid to said American Bonding Company of Baltimore as above stated.

I also wish to advise you that I have and do now rescind and recall any and all assignments by me heretofore made of the moneys due and to become due under said contract to any and all persons, corporations, partnerships or associations, and direct and authorize you to ignore and disregard any such assignments whether the same have been heretofore or may hereafter be presented to you.

Signed—LEO FRANCIS.

Phoenix, Arizona, August 6th, 1929.

I, J. W. Laur, of Maricopa County, State of Arizona, do hereby swear that the above is a true and exact copy of the original letter.

J. W. LAUR.

Sworn and subscribed to before me, a notary public, in and for the County of Maricopa, State of Arizona, this 3rd day of December, 1929, at Phoenix, Arizona.

P. S. BASSFORD.

My commission expires Mar. 30, 1930.

B.-522. Petitioners' Exhibit No. 21 for Identification. [474]

TESTIMONY OF I. L. NIHELL, FOR PETITIONING CREDITORS.

I L. NIHELL (Manager of Standard Sanitary Manufacturing Co.)

(Examination by Miss BIRDSALL.)

My name is I. L. Nihell. I am manager for the Standard Sanitary Manufacturing Company. I

(Testimony of I. L. Nihell.)

have produced in response to subpoena on the Standard Sanitary Manufacturing Company certain assignments made by the Phoenix Plumbing & Heating Company between the dates of April 17, 1929, and August 17, 1929, these assignments being Central Heating plant job, library building job and Phoenix Junior College, dated May 7 (produced by witness received in evidence and marked Petitioners' Exh. 32 in Evidence). [475]

B.-522.

PETITIONERS' EXHIBIT No. 32.

In Evidence.

12-11-29.

Letter Head.

PHOENIX PLUMBING & HEATING
COMPANY,

316 North Sixth Avenue,

Phoenix, Arizona.

May 7, 1929.

To Whom It may Concern:

We herewith assign all moneys now due or to become due on Contract for Material and Labor on the High School Heating Plant, Phoenix, Arizona, to the STANDARD SANITARY MFG. CO., 447 East Jefferson Street, Phoenix, Arizona; and do herewith instruct the Honorable School Board, Clerk of the Board, or any other party or parties who may be designated to make payment of this money, to make payment of same to the above

named firm at the address given, as such payments may become due.

Yours truly,
PHOENIX PLUMBING & HEATING CO.
By D. FRANCIS (Signed),
Manager.

Witness to above signature.

PAUL E. GEHRES (Signed).

B.-522. Petitioners' Exhibit No. 22 for Identification. 12-11-29. [476]

B.-522.

Petitioners' Exhibit No. 32.

In Evidence.

12-11-29.

Letter Head.

PHOENIX PLUMBING & HEATING
COMPANY,

316 North Sixth Avenue,

Phoenix, Arizona.

May 7, 1929.

To Whom It may Concern:

We herewith assign all moneys now due us or to become due for Plumbing on the High School Library Building, Phoenix, Arizona, to the STANDARD SANITARY MFG. CO., 447 East Jefferson Street, Phoenix, Arizona; and do herewith instruct your Honorable School Board, Clerk of the Board, or any other party or parties to whom this may be addressed, to make payment of said moneys

to the above named firm at the address given above,
as said sums may become due.

Yours truly,
PHOENIX PLUMBING & HEATING CO.

By D. FRANCIS (Signed),
Manager.

Witness to above signature.

PAUL E. GEHRES (Signed). [477]

B.-522.

Petitioners' Exhibit No. 32.

In Evidence.

12-11-29.

Letter Head.

PHOENIX PLUMBING & HEATING
COMPANY,

316 North Sixth Avenue,

Phoenix, Arizona.

May 7, 1929.

To Whom It may Concern:

We hereby assign all moneys now due us or to become due us on Contract for Plumbing on the Phoenix Junior College Job, Phoenix, Arizona, to the STANDARD SANITARY MFG. CO., 447 East Jefferson Street, Phoenix, Arizona; and do herewith instruct your Honorable School Board, Clerk of the Board or other party or parties to whom this may be addressed, to make payment of said moneys to the above firm at the address given above, as said sums may become due.

Yours truly,
PHOENIX PLUMBING & HEATING CO.

By D. FRANCIS,
Manager.

Witness to above signature.

PAUL C. GEHRES.

B.-522. Petitioners' Exhibit No. 22 for Identification 12-11-29. [478]

The assignment of the Yuma High School job is the only other one that I know was given by the Phoenix Plumbing & Heating Company during the period between April 17, 1929 and August 17, 1929. (Assignment produced by witness and received in evidence, marked Petitioners' Exh. 33 in Evidence.) [479]

B.-522.

PETITIONERS' EXHIBIT No. 33.

In Evidence.

12-11-29.

Letter Head.

STANDARD SANITARY MFG. CO.,

447 E. Jefferson Street,

Phoenix, Arizona.

April 26, 1929.

Board of Trustees,
Yuma High School,
Yuma, Arizona.

Att'n Clerk of the Board:

Gentlemen:

We hereby assign all moneys now due us or to become due us on Contract for Plumbing on the Yuma High School Gymnasium, Yuma, Arizona, to the STANDARD SANITARY MFG. CO., 447 East Jefferson Street, Phoenix, Arizona; and do herewith instruct your Honorable School Board,

(Testimony of I. L. Nihell.)

yourself, or any other party or parties to whom this may be addressed, to make payment of said moneys to the above named firm at the address given above, as said sums may become due.

Yours truly,

PHOENIX PLUMBING & HEATING CO.

By LEO FRANCIS,

Owner.

Witness: HELEN LANGDON.

Petitioners' Exhibit No. 23 for Identification.

[480]

We held other assignments prior to April 17, 1929. The amount due the Standard Sanitary Manufacturing Company by the Phoenix Plumbing & Heating Company on the night of August 17, 1929, was \$37,564.58. I could not tell what amount is due and owing to the Standard Sanitary Manufacturing Company by the Phoenix Plumbing & Heating Company at the present time. I haven't the books here showing it. I could not state without the original books of entry approximately what is due and owing to the Standard Sanitary Manufacturing Company from the Phoenix Plumbing & Heating Company at the present time.

Without having the records to refer to I cannot state what payments have been made subsequent to August 17th, that have been credited to that account, nor can I state them approximately. There was one \$10,000 payment. That is all that I know about it without reference to the record. That payment was made on account of a contract existing prior to August 12, 1929. It was credited on

(Testimony of I. L. Nihell.)

open account. Our account with the Phoenix Plumbing & Heating Company was carried as an open account and not to particular jobs and contracts. Payments were just credited against the open account and not against any particular contract on the ledger.

Referring to Petitioners' Exh. 3 for Identification, 7 in Evidence, the contracts receivable ledger of the Phoenix Plumbing & Heating Company and the notation on a job under the name of W. H. Brown "balance assigned to Standard Sanitary Manufacturing Company"—I cannot explain that at all. I never saw it before. I cannot now remember of any negotiations for an assignment of that account to us on May 7, 1929. If there is a similar notation of the balance assigned on the City Hall job on these books, the same answer would apply to that. I know of no reason why there should have been any negotiations and I don't remember any. As a matter of fact we had an assignment [481] on the City Hall job prior to May 7, 1929. That is true of the Insane Asylum job. No changes in these two assignments were made on May 7, 1929, or at any time during the life of the assignments.

I don't know exactly the time we started furnishing material on the City Hall job. I have my records of the amount of material furnished on the City Hall job. The total amount of charges for materials furnished on the City Hall job up to August 6, 1929, was \$16,484.46. Prior to August 8, 1929, we had notified the Southern Surety Company

(Testimony of I. L. Nihell.)

through our attorneys that we would extend no further credit on that job to the Phoenix Plumbing & Heating Company. That was approximately August 6th. It was the Southern Surety Company that was notified on the City Hall job.

I cannot say whether we notified the bonding company on the Yuma High School, the Phoenix Junior College and the Central Heating Plant, and library and class-room job at about the same time, that we were not furnishing them material. I don't believe we notified them at all at that time. It is hard to say when we notified them. Some of them were notified when they came in and wanted to draw material. It all depended on what dates they wanted to credit more charges against the job. I couldn't say whether the bonding company or the Phoenix Plumbing & Heating Company came to us about it. It was our refusal to extend further credit to the Phoenix Plumbing & Heating Company which caused the bonding companies to take over these jobs. I could not say whether the bonding company came to us for material before we gave notification of stopping credit to the Phoenix Plumbing & Heating Company.

I think there was one job where someone else had gone to the bonding company and they came to us before we had notified the Plumbing Company, but I could not say when it was. [482] It was not in writing. We notified the bonding company on the Schwentker job. I do not know the date, or whether it was prior or subsequent to the date we notified the Southern Surety Company. It was

(Testimony of I. L. Nihell.)

along about that time. I don't think we notified any of the bonding companies or the Phoenix Plumbing & Heating Company that we were stopping their credits on these jobs during July. I am pretty sure we didn't. I have the book here showing all payments made on account of the Phoenix Plumbing & Heating Company to the Standard Sanitary Manufacturing Company during the period between April 17 and August 17, 1929.

April 30, \$967.94; May 3d, \$2500; May 6, \$508.94; May 13th, \$695.00; May 15th, \$59.85; May 23, \$20.33; May 23, \$49.88; May 20, \$1448.00; May 31, \$16.50 (credit); May 24, \$6.50 (credit); July 6, \$11.72; July 7, \$200; July 11, \$13,000; July 26, \$71.22; another one, which was partly returned goods, \$24.33; July 29 July 30, \$933.50; August 2, \$2.65; August 2, \$300.00; August 3, \$166.79; August 8, \$1254.44; August 9, \$850.00; August 10, \$3.95; August 10, \$343.75; another credit memo on August 16, \$1,000, making the balance due as of the night of August 17th, 1929, \$1,000 less than what I gave you, or \$36,564.58. [483]

That \$10,000 payment was made by the Southern Surety Company. They were surety on the City Hall job. It was not on any other job. That was the only one bonded by the Southern Surety Company that we had anything to do with.

The payment of \$13,000 in June I have testified to was by the Lincoln Mortgage Company. I don't know on what contract the payment of August 8 of \$1254.44 was made. That was a credit. It could not have been returned goods for that much money.

(Testimony of I. L. Nihell.)

I have no recollection from what source that payment was made. I don't think we have any books here that would show. We may have a copy of release of lien right on the job to indicate it was not that job. The payment on July 29, of \$2,949 may have been on the Asylum job. It was along about that time that we collected about that much money.

On contract for plumbing such as we made by the Phoenix Plumbing & Heating Company, when they are started with the Standard Sanitary Manufacturing Company fixtures, some few of them could have been completed with fixtures purchased from other manufacturers, but not all of them. That depends on the method with which the fixtures are roughed in and connected. The payment of \$2,949 on the Asylum job was paid direct to me. I don't know whether the Phoenix Plumbing & Heating Company show it on their credits or not. I told them I collected the money. I don't know that they did. I told them I was giving credit for it on their account.

The payment on July 30 of \$1,933 was made direct to us by the contractor on the Murphy job. It was delivered to us on release of lien right against the job. I think that \$1,254.33 payment was a payment made direct to us by O. P. Johnson for release of lien on his job. [484]

About July 20th of this year, I think I was in a conference at the Commercial National Bank with Mr. Fretts and some of the officers of the bank and Mr. Fryberger. I gave Mr. Fryberger some figures on materials to be furnished to complete the con-

(Testimony of I. L. Nihell.)

tract. I don't remember ever seeing a statement of total assets and liabilities at that time. But I did furnish some figures to Mr. Fryberger. He told me he wanted some figures for the purpose of lining up some of the jobs that had to be completed and he wanted to know the maximum amount that it would take to complete some of the jobs on hand and I furnished him those figures. It was an estimate, except that I made it plenty high so that he would have plenty of margin to work on.

(Examination by Mr. DUFFY.)

(Witness identifies assignment dated December 5 made by Dr. Francis, which was received in evidence marked Respondents' Exh. "D" in Evidence.)

(Witness identifies assignment dated November 5, 1928, executed by Dee Francis, which was received in evidence, marked Respondents' Exh. "E" in Evidence.)

These Respondents' Exhibits "D" and "E" in Evidence remained in my possession from the date of the execution up to the present time. There were never any negotiations made towards changing them.

Referring to Petitioners' Exhibit 32 and 33 in Evidence, consisting of four assignments executed between April 17 and August 17 by the Phoenix Plumbing & Heating Company, since the execution of those assignments we have never received any money by reason of them so far as I know. They were not accepted by the owners of the buildings described in the assignments and in one case the

owners refused to accept them. I never could get an acceptance to them. [485]

B.-522.

RESPONDENTS' EXHIBIT "D."

In Evidence.

12-11-29.

Letter Head.

STANDARD SANITARY MFG. CO.

447 E. Jefferson Street,

Phoenix, Arizona.

December 5, 1928.

To Whom it May Concern:

We hereby assign all moneys now due or to become due us on contract for plumbing and heating on State Hospital Job, now under construction, on Tempe Road near Phoenix, Arizona to the STANDARD SANITARY MFG. CO., 447 EAST JEFFERSON STREET, PHOENIX, ARIZONA; and do herewith instruct the general contractor on this job or other party or parties who are or may be designated to pay out moneys on construction work on this job, to make payment of said moneys to the above named firm at the address given above as said sums may become due.

Yours truly,

PHOENIX PLUMBING & HEATING CO.

By D. FRANCIS,

Manager.

Witness:

FRANK J. CAMPBELL—12/5/28.

I. L. NIHELL.

I herewith accept above assignment in the amount of amount due and agree to make payment of money as stated herein.

Signed—June 23, 1929. Date—W. H. BROWN.

Witness:_____.

Respondents' Exhibit "D." for Identification.
[486]

B.-522.

RESPONDENTS' EXHIBIT "E."

In Evidence.

12-11-29.

Letter Head.

STANDARD SANITARY MFG. CO.

447 E. Jefferson Street,

Phoenix, Ariz.

November 5, 1928.

To Whom it May Concern:

We herewith assign all moneys now due us or to become due us on Contract for Plumbing on the Phoenix City Hall Job, Phoenix, Arizona, to the STANDARD SANITARY MFG. CO., 447 East Jefferson Street, Phoenix, Arizona, and do herewith instruct the Honorable Commissioners and City Treasurer, City of Phoenix, or other party or parties to whom this is addressed to make pay-

(Testimony of I. L. Nihell.)

ment of said moneys to the above named firm at the address given.

Yours truly,

PHOENIX PLUMBING & HEATING CO.

By C. D. FRANCIS,—11-5-1928.

Manager.

Witness:

FRANK J. CAMPBELL—11-5-1928.

I. L. NIHELL—Nov. 5-1928.

Respondents' Exhibit "E" for Identification.

[487]

(Examination by Miss BIRDSALL.)

Referring to Petitioners' Exh. 11 for Identification, being an agreement dated July 11, 1929, between L. W. Fryberger and Leo Francis, which has never been executed, I never heard anything of it at all. I never heard of such a thing. [488]

TESTIMONY OF DOROTHY DORRELL, FOR PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

My name is Dorothy Dorrell. I am employed by the Lincoln Mortgage Company doing special book-keeping, and in that position I am custodian of certain papers and canceled checks of the Lincoln Mortgage Company. I have with me, check of the Lincoln Mortgage Company to the Phoenix Plumbing and Heating Company, dated in June, 1929, for approximately \$14,000.00. (Witness pro-

duces check which is thereupon received in evidence marked Petitioners' Exhibit No. 34 in Evidence.) [489]

B.-522.

PETITIONERS' EXHIBIT No. 34.

In Evidence.

12-11-29.

Face of Exhibit:

Builders.

Subdividers.

Brokers.

LINCOLN MORTGAGE COMPANY.

Lincoln Built Homes.

No. 2489.

Phoenix, Arizona, June 8, '29

Pay to the order of Phoenix Plumbing & Heating Co. \$14000.00—Lincoln Mortgage Co.—FOUR-TEEN THOUSAND DOLLARS...DOLLARS.

LINCOLN MORTGAGE COMPANY.

M. E. WADDOUPS.

C. N. WYNN.

CITIZENS STATE BANK.

91-6 Phoenix, Arizona.

HENRY O. DORMAN.

This voucher is a Payment in Full of the Within Account and the Payee Accepts it as Such by Endorsement Below.

Endorse Here.

Phoenix Plumbing & Heating Co.

Cliff B. Freyberger, Mgr. [490]

B.-522.

PETITIONERS' EXHIBIT No. 34.

In Evidence.

12-11-29.

(Back of Exhibit.)

LINCOLN MORTGAGE COMPANY,

214 North Central Avenue.

To Phoenix Plumbing & Heating Company—Dr.

Date	Detail		Amounts
6/8/29	Payments in full for plumbing on following jobs:		
#59 Crider #1	\$ 228.15	#60 Crider #2	\$230.82
#52 Statler #2	425.00	#43 Files	190.00
#57 Lewis	475.00	#48 Williams	175.00
#56 Clayton	800.00	#25 McGowan	371.38
#53 Peck	276.00	#63 Kimball	273.57
		#54 Radcliffe	

Date		Detail			Amounts	
#49	Statler #1	\$ 246.00	#47 Loza	\$1134.52	#15 Ott	\$ 240.00
#38	De La Cruz	202.13	#44 Niles	588.67	#26 Steele	283.45
#23	Rothermel	250.00	#30 Green	115.90	#39 Butler	457.52
#31	Miller	350.00	#28 Vaughn	340.00	#51 Anderson	620.00
#41	Harris	518.24	#42 Kennedy	112.37	#50 Berry	313.03
#40	Lane	402.82	#46 Mitchell	119.88	#32 Lair	182.62
#58	Lewis	1916.25	#36 Hatchell	300.00	#37 Reed	199.37
#61	Lynch	257.77	#55 Smith #2	247.92		
			Total	\$14,196.77		Total amount
			Credit	196.77		\$14,000.00

Charge or credit job or department.

Construction

Approved—H. O. D.

PETITIONERS' EXHIBIT No. 24.

For Identification. [491]

Thereupon Petitioners' Exhibit No. 13 for Identification, being balance sheet of the Phoenix Plumbing and Heating Company, dated July 20th, 1929, was received in evidence and marked Petitioners' Exhibit No. 35 in Evidence. [492]

B.-522.

PETITIONERS' EXHIBIT No. 35.

In Evidence.

12-11-29.

BALANCE SHEET OF THE PHOENIX
PLUMBING AND HEATING COMPANY,
AS OF JULY 20th, 1929.

ASSETS.

Cash on hand	\$ 150.00
Accounts Receivable	3,935.92
Contracts Receivable	45,119.90
Inventory	4,850.00
Labor furnished on Safford Hotel Job (Estimated)	1,000.00
Deficit	20,436.25
<hr/>	
TOTAL	\$75,492.07

LIABILITIES.

Accrued Salaries	\$ 107.50
Payroll week ending July 20, 1929	550.00
Estimated Labor to complete contract ...	1,395.00
Estimated material to complete con- tracts	13,850.00
Notes payable bank	6,100.00
Accounts payable miscellaneous	15,548.57

604 *Standard Sanitary Manufacturing Company*

Accounts payable Standard Sanitary

Mfg. Co. 37,941.00

TOTAL\$75,492.07

Petitioners' Exhibit No. 13 for Identification.
11-20-29. [493]

The answer of Crane Co., one of the objecting creditors herein, having been dismissed and upon motion of Earl F. Drake, its Counsel, on December 11, 1929, the matter of apportioning, between the objecting creditors and petitioning creditors, the costs and expenses of this proceeding up to and including the said date, to be advanced by said parties at this time, pending the final taxing of costs by the Court, is presented with the request that an order be entered by the Master at this time, apportioning said costs between said parties.

After due consideration, it was by the Master ordered that the costs and expenses of this proceeding, up to and including the 11th day of December, 1929, be apportioned, for the purpose of said advancement, at this time, between said parties, as follows: One-half thereof to be advanced by petitioning creditors; one-fourth thereof to be advanced by Crane Company, an objecting creditor herein, and the remaining one-fourth to be advanced by the Standard Sanitary Manufacturing Company, an objecting creditor.

A letter was introduced by petitioning creditors addressed to Frank J. Duffy, signed by the Standard Sanitary Manufacturing Company, by R. C. Bower, Asst. Manager, and received in evidence

without objection, and marked Petitioners' Exhibit No. 36 in Evidence. It was stipulated by and between the Standard Sanitary Manufacturing Company and by petitioning creditors, and counsel for same, that the contents of said Petitioners' Exhibit No. 36 may be used and considered as a part of the testimony of the witness I. L. Nihell. [494]

B.-522.

PETITIONERS' EXHIBIT No. 36.

In Evidence.

Filed Dec. 12, 1929.

Letter Head.

STANDARD SANITARY MFG. CO.

447 E. Jefferson Street,

Phoenix, Ariz.

December 12, 1929.

Mr. Frank Duffy,
Attorney at Law,
Phoenix, Arizona.

Dear Sir:

With reference to the following items appearing as credits on the account of the Phoenix Plumbing and Heating Company:

Item No. 1—August 3, 1929, amount.....	\$ 166.79
Item No. 2—August 6, 1929, amount.....	300.00
Item No. 3—August 8, 1929, amount.....	1254.00
Item No. 4—August 10, 1929, amount.....	343.75
Item No. 5—August 16, 1929, amount.....	1000.00

Item No. 1 is cash received and covering miscellaneous small repair jobs.

Item No. 2 is remittance received from the Phoenix Plumbing and Heating Company on the John Mason Ross Job. The same applies to item No. 4. A Release has been issued on this job.

Item No. 3 covers remittance received from the Phoenix Plumbing and Heating Company on the O. P. Johnson Job, which job has just been finished and will of necessity have to be liened, unless we receive a remittance for the balance immediately.

Item No. 5 is an advance amount for materials to be used in the Safford Hotel Job, paid by the McGinty Construction Company.

Trusting the above information is satisfactory, we are

Yours truly,

STANDARD SANITARY MFG. CO.

By R. C. BOWER,

R. C. BOWER, Asst. Mgr.

RCB:HL. [495]

It was stipulated between counsel that petitioning creditors rest with the understanding that testimony of Fred Blair Townsend may be received at a later date as a part of their case.

Announcement was made by Frank J. Duffy, Esq., counsel for Standard Sanitary Manufacturing Company, in open court, that he rests at this time.

Motion of counsel for alleged bankrupts, D. L. and Lyon Francis, to strike various parts of testimony was thereupon made and by the Master denied.

TESTIMONY OF FRED BLAIR TOWNSEND,
FOR PETITIONING CREDITORS.

(Examination by Miss BIRDSALL.)

My name is Fred Blair Townsend. I am a practicing attorney, representing Crane Company, one of the objecting creditors in the proceeding herein. Referring to Petitioners' Exhibit No. 11 for Identification, which is an unsigned contract between Leo Francis and the Phoenix Plumbing and Heating Company and L. W. Fryberger, dated July 11, 1929, I will state that I am sure there was such an instrument prepared, but whether this is the one or not, I couldn't say, as there are no identification marks on it. I do recall drawing up such a one and I am certain that someone from the Phoenix Plumbing and Heating Company came in and got a copy of it. I wasn't in Phoenix on July 11th. [496] I left about the 7th or 8th of July, or maybe the 6th. I think I dictated this instrument. The assignment was to have been made and that was probably the reason for it. That is dated the date the stenographer wrote it up and more than likely that is a copy of it. I remember she told me that someone came in and got a copy of it. I represented Crane Company, but whether the request for drawing this up came from Crane Company or was a suggestion from Fryberger, I don't recall. I recall having a conversation with Mr. Nihell in my office in regard to it. In this instrument there were a number of assignments to Crane Company and the Standard Sanitary Manu-

(Testimony of Fred Blair Townsend.)

facturing Company which I recognized, but I don't remember from whom I got the list of assignments that had been made to these creditors. I recall having some conversation with Mr. Nihell in regard to the assignment being drawn up, but I do not know whether Mr. Nihell ever had a copy of this particular assignment. I think it must have been around the 1st of July that I had this conversation with Mr. Nihell. I returned home in August, but I don't think anything was done after I got home. So far as I know, no copy of this was taken to the Commercial National Bank. It was either Mr. Ward or Mr. Drake who was going ahead with this matter.

(Examination by Mr. DUFFY.)

I remember having talked with Mr. Armstrong and yourself. I remember having a conversation with Mr. Nihell and probably that was the time, but I don't recall where. I remember we got a good deal of that information from Mr. Nihell and Mr. Fryberger. We went into the affairs of the company and the amount of business they had been doing and the profits they have—I went into the matter with Fryberger, and practically came to the conclusion that the Phoenix Plumbing [497] and Heating Company could pay off 100 cents on the dollar if a real manager was in. Fryberger was a practical man from Colorado. I cannot recall what the conversation was with Mr. Nihell, but you and I agreed that I should draw up a tentative common-law assignment, making Fryberger assignee and sending out letters to creditors

(Testimony of Fred Blair Townsend.)

explaining the situation, and asking them to agree to it. I remember this assignment, and going over it with Mr. Armstrong. It seems to me the letter. My recollection is that after going into the matter carefully we decided the thing could be put on its feet. The purpose of this was to give them the opportunity. That was authorized on the basis that there was sufficient business in the Phoenix Plumbing and Heating Company with proper management, to pay off its debts. The question was as to credits and finances, as I remember. There was nothing said at that time by any of the creditors as to the concern being insolvent.

(Examination by Miss BIRDSALL.)

The only creditors, of course, who were there, were the Crane Company, the Standard Sanitary Manufacturing Company and the Commercial National Bank. In the assignment as I drew it up I was careful to recognize that the various assignments of jobs totalling most of the work that was outstanding, should be held by the two creditors represented by Mr. Duffy and myself. I think probably all of these jobs were bonded jobs, so that the Standard Sanitary Manufacturing Company and Crane Company would have been protected by the bonds on the jobs. The Standard Sanitary Manufacturing Company and Crane Company were holding assignments of all amounts due on the largest jobs and in this assignment that was drawn up, they were insisting that other creditors recognize those assignments. I

(Testimony of Fred Blair Townsend.)

don't believe many of Crane Company jobs were bonded, although I [498] don't know. All of the Standard Sanitary Manufacturing Company's jobs are all bonded jobs. Crane Company and the Standard Sanitary Manufacturing Company would have mechanics' liens on anything that wasn't bonded. The Commercial National Bank was an unsecured creditor without any security whatever. In answering Mr. Duffy's question that it was the judgment of Nihell, Fryberger, Armstrong, Duffy and myself that this concern would be able to pull out and pay dollar for dollar, that was contingent on credit being extended and their getting material to go ahead with those jobs. It was recognized that the Phoenix Plumbing and Heating Company had to have money, that there were accounts coming in that had not been paid, and that they had to have additional material in order that work should not stop. That was the trouble—the creditors were wondering how things were going to get along. The question of pay-roll was met by the Phoenix Plumbing and Heating Company. We didn't have anything to do with that. I don't think there was any discussion about creditors having anything to do with pay-roll. The discussion centered on furnishing of materials on jobs which were under construction so that the jobs could be completed, and the money then be forthcoming, but the matter of pay-roll was something they had to take care of. The Phoenix Plumbing and Heating Company discussed these matters, that they would have to be met some way. They did not have much concern about the question of pay-roll. I guess they were

(Testimony of Fred Blair Townsend.)

sitting pretty on that, but there was this question of materials. I cannot remember that anything was said about the Commercial National Bank advancing their pay-roll. I think there is no question but that this instrument here (Petitioners' Exhibit No. 11 for Identification) is the one that was drawn at that time in consideration of these different conversation with Mr. Duffy. I don't remember whether a letter to creditors was ever sent out. [499]

(Examination by Mr. DUFFY.)

These creditors—Crane Company and the Standard Sanitary Manufacturing Company,—agreed that they would go ahead and furnish this material in return for the protection of their assignments. I think that was substantially what was intended to be done. The Phoenix Plumbing and Heating Company insisted they were solvent, and that the profits they had would let them pay out the material bills and have some left. That was the purpose of the assignment. They proposed to do that by putting in good management.

(Examination by Miss BIRDSALL.)

When I said that "they said they were solvent," I mean the Phoenix Plumbing and Heating Company said so. I got my information from them. I never saw their books, the books of the Phoenix Plumbing and Heating Company and never went into the matter to see whether those statements were based on anything substantial. I just took their word for it. I don't know how many jobs

(Testimony of Fred Blair Townsend.)

these people were working on, except that they insisted they had substantial profits. I didn't go into the matter to see if there were any profits at all. It seems to me that Fryberger had some figures, but how exhaustive they were, I don't know. I don't know that Mr. Fryberger had only been there two or three weeks at the time of these negotiations. I don't know the list of jobs that were outstanding.

(Examination by Mr. DUFFY.)

It seems to me there was an investigation made by Mr. Nihell, Crane Company and Fryberger, but I don't remember it. It must have gotten a starting point somewhere, but I don't remember.

(Examination by Miss BIRDSALL.)

At the time these negotiations were going on, Mr. Fryberger [500] was in charge of the Phoenix Plumbing and Heating Company as manager. He was an efficient man. The necessity for making this assignment for the benefit of creditors, as I recall it is that there was a threatened suit that started this investigation, that is my best recollection. I cannot say that it was because of fear that if a suit was filed, bankruptcy would ensue and some of these assignments might be set aside as preferences was the reason for drawing this assignment. I was representing the creditor who wanted to have the suit filed, I represented Crane Company, who held a number of assignments. Thereupon Petitioners' Exhibit No. 11 for Identification

was received in evidence without objection, and marked Petitioners' Exhibit No. 37 in Evidence.

Petitioning creditors rest. [501]

B.-522.

PETITIONERS' EXHIBIT No. 37.

In Evidence.

Filed 12-27-29.

THIS AGREEMENT made and entered into this 11th day of July, 1929, between LEO FRANCIS, doing business under the firm name and style of PHOENIX PLUMBING & HEATING CO., of Phoenix, Arizona, hereinafter referred to as assignor, and L. W. FRYBERGER, of Phoenix, Arizona, hereinafter referred to as assignee, and the creditors of said assignor, consenting in writing to this agreement, hereinafter referred to as the creditors.

WITNESSETH:

That said assignor for and in consideration of the covenants and agreements to be performed by the other parties hereto, as hereinafter contained, and for the sum of One Dollar (\$1.00) to the assignor in hand paid by the assignee, receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, assign and transfer unto said assignee, his heirs and assigns forever, all of the property of the assignor of every kind and nature, and wheresoever situated, both real and personal, and any interest or equity therein not exempt from execution, including particularly all of the stock of merchandise, furniture, fixtures,

bills receivable, accounts receivable, situated in or connected with or pertaining to the plumbing and heating business now owned, conducted and operated by the assignor at 316 North Sixth Avenue, Phoenix, Arizona, and including choses in action, insurance policies, cash on hand, and all other assets of any nature whatsoever.

It is understood, however, that heretofore and at various times during the past eight or ten months assignor above named has in various instances assigned and transferred to various of his creditors accounts receivable or certain interests [502] in accounts receivable owned by said assignor, said creditors having furnished materials on jobs being completed by assignor; it is hereby expressly understood that the following assignments of claims due said assignor for work done and materials furnished in the following mentioned contracts are recognized as valid, and are to be paid to the assignees, and constitute no part of the assets of said assignor:

JOB.	ASSIGNED TO:	AMOUNT.
E. J. Bennett.....	Crane Co.....	\$1000.00
Harry Tritle	Crane Co.....	800.00
O. P. Johnson	Crane Co.....	500.00
Frank B. Schwentker	Crane Co.....	800.00
James Barnes	Crane Co.....	225.00
O. R. Bell	Crane Co.....	400.00
Dan Campbell	Crane Co.....	500.00
Junior College	Standard Sanitary Mfg. Co...	2257.20
Library Building	Standard Sanitary Mfg. Co...	9410.12
State Insane Asylum	Standard Sanitary Mfg. Co...	2815.30
City Hall	Standard Sanitary Mfg. Co...	8707.85
Yuma School	Standard Sanitary Mfg. Co...	2717.00
Central Heating Plant	Standard Sanitary Mfg. Co...	3507.10

and it being agreed that all creditors having or claiming to have liens on account of work done or materials furnished by said assignors waive their liens.

Said assignee is to receive the said property, conduct the said business, should he deem it proper, and he is hereby authorized at any time after the signing hereof by the said assignor, to sell and dispose of the said property on such time and terms as he may see fit, and he is to pay to said creditors *pro rata*, according to the several indebtednesses due to them from said assignor, the net proceeds arising from the conduct of said business and sale and disposal of said property, after deducting all moneys which said assignee may at his option pay for the discharge of any lien on any of said property, and any indebtedness which under the law is entitled to priority of payment, also all expenses incurred.

In consideration of the premises parties of the third [503] part agree to accept their *pro-rata* portion of the net recoveries of this estate as paid to them by said assignee, in full payment and satisfaction of their several indebtednesses, and release said assignor from all claims and demands that they now have against said assignor, provided, however, that this agreement to accept said *pro-rata* and release said assignor is to become inoperative and void at the option of any of the third parties without notice if anything intervenes to prevent the payment of said pro rate to said third parties by any act of said assignor or any creditor of said assignor.

IN WITNESS WHEREOF the assignor and assignee have hereunto set their hands the day and years first above written, and the joining of said creditors to be evidenced by their separate consent in writing, and by filing of their claims with the assignee.

_____,
Assignor.
_____,
Assignee.

State of Arizona,
County of Maricopa,—ss.

On this — day of July, 1929, before me, a Notary Public in and for the County of Maricopa, State of Arizona, personally appeared Leo Francis, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same for the purposes therein expressed.

_____,
Notary Public.

My commission expires: [504]

[Title of Court and Cause.]

ORDER APPROVING STATEMENT OF EVIDENCE.

The statement of evidence made by appellant under direction of the court having been duly lodged in the office of the Clerk of this court by appellant,

SHEET NO. _____

ACCOUNT NO. _____

RATING _____

CREDIT LIMIT _____

NAME _____

Loan Account. P. 10

BUSINESS _____

ADDRESS _____

From D. FRANCIS TRU COMPANY To Joe Thomas

Size 1017, Form 5

Made in U. S. A.

DATE	ITEMS	POL. Y	DEBITS	DATE	ITEMS	POL. Y	CREDITS
				1929			
				Apr. 14	Forward { U.S. Gov. 4-12-29. 1.00 Load		241.00
				✓ 13	Cash.		5.00
				✓ 17	US Gov. 145. Load		275.00
				May 15	" " "		526.82
				✓ 14	J. J. Barry Co. Fire & Marine Insurance		4.00
							1.17.02

5th

SHEET NO.

ACCOUNT NO.

RATING

CREDIT LIMIT

NAME

H. Frankel

First

BUSINESS

ADDRESS

Form 5

MADE IN U. S. A.

DATE	ITEMS	FOL. ✓	DEBITS	DATE	ITEMS	FOL. ✓	CREDITS
1929				1929			
Apr 26	Personal		100				
✓ 27			200				
✓			2500				
✓			100				
✓			650				
✓			2000				
✓			1000				
✓			1000				
✓			2675				
✓			350				
✓			200				
✓			4500				
✓			400				
✓			900				
✓			600				
✓			10000				
27			4500				
27			14886				
29			1615				
✓ 4			4895				
✓ 6			4500				
✓ 11			200				
✓ 11			4500				
✓ 18			25				
✓ 18			4500				
✓ 22			5000				
✓ 22			4875				
✓ 22			100				
✓ 22			1000				
✓ 22			675				

597

SHEET NO. _____

ACCOUNT NO. _____

RATING _____

CREDIT LIMIT _____

NAME _____

BUSINESS _____

ADDRESS _____

Loan Account
for Thomas

Multiple Size 1917, Form 3

Made in U. S. A.

DATE		ITEMS	POL.	DEBITS	DATE		ITEMS	POL.	CREDITS
APR	16	By notes.	✓	496	APR	16	Forward.		
APR	17	✓	✓	283		17			
✓	18	✓	✓	2604		18			
✓	19	✓	✓	2611		19			
✓	20	✓	✓	2645		20			
✓	21	✓	✓	F-98		21			
✓	22	✓	✓	F-103		22			
✓	23	✓	✓	4964		23			
✓	24	✓	✓	F-105		24			
									113678

F. 101

SHEET NO. _____

RATING _____

BUSINESS _____

CREDIT LIMIT _____

NAME _____

ADDRESS _____

ACCOUNT NO. _____

Photo
Marie + Joe
Francis

Form 1017, Form 3

Made in U. S. A.

DATE	ITEMS	POL.	Y	DEBITS	DATE	ITEMS	POL.	Y	CREDITS
1929									
May 1	Recd	2535		150.00	April 30	load.			1087.52
✓ 3	✓	4551		80.00	May 10	✓			500.00
✓ 4	✓	2557		20.00					
✓ 6	✓	4590		30.00					
✓ 16	OK Returned			1087.52					
June 5		cash		1600.00					
				- - -					

R-5

SHEET NO. _____

ACCOUNT NO. _____

RATING _____

CREDIT LIMIT _____

NAME *Walter Schayke*

Photo

BUSINESS _____

ADDRESS *2000 Mc Court*

Form 1017, Form 5

Made in U. S. A.

DATE	ITEMS	FOL	✓	DEBITS	DATE	ITEMS	FOL	✓	CREDITS
<i>May 12</i>	<i>Payment</i>	<i>4724</i>		<i>1015.00</i>	<i>Apr. 24</i>	<i>FORWARD</i>			<i>1015.00</i>
<i>17</i>		<i>F-106</i>	✓	<i>205.00</i>					<i>205.00</i>

510

Cash Receipts

604

date	Received From	Total Cash Receipts	Bank Deposits	Cash Receipts	Contrast Rec.	Low Credit	Grand Total
1929							
1 Apr 11	1000 in Bank After explosion - Cash on Hand	1457	1457				1457
2	Mr. J. C. Davis	275		275			1732
3	W. B. Waddups	270		270			2002
4	W. W. Cluff	16838			16838		36860
5	Bank deposit		19075				55935
6	Cash Sale	100		100			56035
7	Francis O. Francis	500				500	56535
8	Bank deposit		500				57035
9	W. W. Cluff	445		445			57480
10	14 Cash of J. J. Brown	1000				1000	58480
11	Returned from Bank	1000				1000	59480
12	Bank deposit		10000				69480
13	W. W. Cluff	11500		11500			80980
14	W. W. Cluff	675		675			81655
15	Cash Sale - Thornton	125		125			81780
16	Mrs. Sargant	175		175			81955
17	Cash Sale - Kinross	125		125			82180
18	Francis O. Francis - S. J. P. R. K.	27500				27500	109680
19	Bank deposit		40890				150570
20	Cash Sale - low	3500				3500	154070
21	29 Cash Sale Baker	387		387			154457
22	Wasa Bank	25000			25000		179457
23	Bank deposit		253887				433344
24	Mrs. Sargant	12500		9089	3411		445843
25	30 W. W. Cluff	525		525			446368
26	Cash Sale	220		220			446588
27	Marista School Supp.	10110			10110		456698
28	Bank deposit		235610				692308
29	W. W. Cluff	8000			8000		700308
30	Frankford Store	16878			16878		717186
31	F. B. Stewart	30000			30000		747186
32	Joe Francis	108732				108732	855918
33							
34							
35							

the said statement of evidence hereunto attached, is hereby approved by the Court and is made a part of the record, and the same contains all of the testimony in the case in narrative form, except such as is given by question and answer in order that the same might be clearly understood. Where the testimony in the foregoing statement of evidence is set forth in form of question and answer and in the exact language of the witness it is so set forth in the statement under the direction and order of this Court so that the evidence may be clearly understood.

Dated this 21st day of March, 1931.

F. C. JACOBS,
District Judge. [505]

June 1929

June			Bank	Bank	Bank	Bank		
			Received	Withdrawn	Deposits	Withdrawals		
10	Mr. Pitt C. Borden	James J. B.	750.56		749.72	757.69	1	
2	Mrs. D. A. Wagoner	25.00	76.90				2	
3	Mrs. Beattie Thomas	25.00	77.00				3	
4	Mr. W. W. Thomas	19.75				45.00	4	
5	Mr. W. W. Thomas	"	78.08			76.00	5	
6	Mr. W. W. Thomas	"	71.05			14.95	6	
7	Mr. W. W. Thomas	Payroll	78.38			30.00	7	
8	Mr. W. W. Thomas	Payroll	39			10.00	8	
9	Mr. W. W. Thomas	Payroll	1000.00				9	
10	Mr. W. W. Thomas	Payroll					10	
11	Standard Laundry	Wm. J. Smith			12.08	14.03	11	
12	Bank of America	Wm. J. Smith	1.50				12	
13	Bank of America	Adm. Exp.			36		13	
14	Paul C. Baker	Adm. Exp.					14	
15	W. W. Thomas	Adm. Exp.	1.46				15	
16	W. W. Thomas		1.75				16	
17	J. G. Berridge		5.60				17	
18	Wm. W. Thomas		1.46				18	
19	Bank of America				16.55	16.55	19	
20	Mr. W. W. Thomas		1.60				20	
21	Mr. W. W. Thomas				50		21	
22	James H. Moore	Entered Allow	10.00				22	
23	Bank of America		80				23	
24	10.00	Adm. Exp.				171.47	24	
25	13.00	Adm. Exp.				31.50	25	
26	Paul Baker	Office Labor				6.40	26	
27	Wm. W. Thomas	Adm. Exp.				10.00	27	
28	Lee Baker	"				15.00	28	
29	Mr. W. W. Thomas	Adm. Exp.			75.00		29	
30	Mr. W. W. Thomas	Adm. Exp.	18.65				30	
31	Mr. W. W. Thomas	Adm. Exp.	6.05				31	
32	Marlar Drug Store	Adm. Exp.	37.78				32	
33	Mr. W. W. Thomas	Adm. Exp.			50		33	
34	Mr. W. W. Thomas	Adm. Exp.	15				34	
35	Mr. W. W. Thomas	Adm. Exp.	50.00				35	
			7654.76		2622.57	7548.00	7621.45	

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now the Standard Sanitary Manufacturing Company, a corporation, and respectfully shows:

That on the 26th day of May, 1930, a judgment was entered by this Court wherein and whereby the Court overruled the objections of the Standard Sanitary Manufacturing Company to the Report of the Special Master, and that costs of the said Special Master be awarded against the Standard Sanitary Manufacturing Company, and that an exception was allowed on behalf of the Objectors to said ruling; that thereafter the Court caused a formal judgment to be entered adjudicating the said Phoenix Plumbing and [514] Heating Company, a corporation, et al., bankrupts, and referring the same to the Referee in Bankruptcy.

Your petitioner feeling itself aggrieved by the verdict overruling the said objections and the adjudication of the said Phoenix Plumbing and Heating Company, a corporation, et al., as bankrupts, and particularly that portion of said decree declaring that the payment of money to this petitioner by the Lincoln Mortgage Company an act of bankruptcy, hereby petitions the court for an order allowing this petitioner to prosecute an appeal to the Circuit Court of Appeals of the Ninth Circuit, under the laws of the United States in such cases made and provided.

WHEREFORE, your petitioner prays that an appeal be granted in its behalf to the United States

Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco in said Circuit, for the correction of the errors complained of and herewith assigned, and that the court make an order fixing the amount of security to be given by the petitioner Standard Sanitary Manufacturing Company conditioned as the law directs, for costs of said appeal, and that a citation issue and a transcript of record be sent to the appellate court aforesaid.

Attorney.

ARMSTRONG, LEWIS & KRAMER,
Attorneys for Standard Sanitary Manufacturing
Company, Objecting Creditors.

The appeal prayed for in the foregoing petition is hereby allowed, and the cost bond to be given by appellants is fixed in the sum of \$1500.00. [515]

Dated this 25th day of June, 1930.

F. C. JACOBS,
Judge.

Filed Jun. 25, 1930. [516]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Comes now the objecting creditor, Standard Sanitary Manufacturing Company, a corporation, and in connection with its petition for appeal herein, assigns the following errors, which it avers occurred in the adjudication of bankruptcy and the

acceptance of the Master's Report and confirmation thereof by the above-named court.

ASSIGNMENT OF ERROR No. 1.

The Court erred in overruling the objection of the Standard Sanitary Manufacturing Company to that portion [517] of the Special Master's Report contained in Subdivision 16 of the Master's Findings of Fact on page 5 of said Special Master's Report, which finding was in words and figures as follows:

"16. That on or about June 10th, 1929, and within four months next preceding the filing of the petition herein, the said alleged bankrupts, Phoenix Plumbing and Heating Company, a co-partnership, and Leo Francis, Lyon Francis and D. L. Francis, did, while insolvent, transfer and pay over to Standard Sanitary Manufacturing Company, a corporation, creditor, a portion of their property, to wit, money in the sum of Thirteen Thousand (\$13,000.00) Dollars with intent to prefer said creditor over their other creditors."

and to which finding the following objection was made:

"That said finding of fact has no foundation in the evidence submitted, because it appears affirmatively in the report of the evidence and by Respondent's Exhibit 'C' in evidence that Phoenix Plumbing and Heating Company did

on the 5th day of March, 1929, assign and set over to the Standard Sanitary Manufacturing Company all its right, title and interest to the money owed the Phoenix Plumbing and Heating Company by the Lincoln Mortgage Company on a certain contract which the Phoenix Plumbing and Heating Company then had with the Lincoln Mortgage Company, and that said assignment contained an order to the Lincoln Mortgage Company to pay to the Standard Sanitary Manufacturing Company all of the moneys owing or to become due from the Lincoln Mortgage Company to the Standard Sanitary Manufacturing Company.”

and that said objection as overruled was based on the following evidence in the case:

Respondents' Exhibit "C" in evidence, which is in words and figures as follows:

“March 5, 1929.

“Standard Sanitary Mfg. Co.,

“447 East Jefferson St.,

“Phoenix, Arizona.

“Gentlemen:

“You are by this instrument authorized to draw on Lincoln Mortgage Company of this city in the amount of Fourteen Thousand One Hundred Ninety-six Dollars, Seventy-seven cents (\$14,196.77),

“Which sum represents money due this firm [518] for work and materials furnished in the construction of various houses and store buildings owned by the aforesaid Lincoln Mortgage Company.

“This assignment effective this date.

“PHOENIX PLUMBING & HEATING CO.,

“By D. FRANCIS.”

(Marked Respondents’ Ex. No. “C” in Evidence.)

The check of the Lincoln Mortgage Company was introduced in evidence, being Petitioners’ Exhibit No. 34. This is a check for Fourteen Thousand (\$14,000.00) Dollars drawn on the Citizens State Bank of Phoenix to the Phoenix Plumbing & Heating Company and endorsed on the back, “Phoenix Plumbing and Heating Company, Cliff B. Fryberger, Mgr.” All the evidence in the record on this subject is the testimony of Mr. Cliff Fryberger (Trans., Vol. 3, page 391): beginning at line 27 and ending at line 27, page 392:

“Q. In regard to the amount of money paid by the Lincoln Mortgage Company, when was the date you went to work for the Phoenix Plumbing & Heating Company?

A. I think June 5th.

Q. And it was on that date that payment was made by the Lincoln Mortgage Company?

A. Several days later.

Q. Isn’t it a fact that the way that was handled a check was made to the Phoenix Plumbing & Heating Company for \$14,000?

A. Yes, sir.

Q. And the check was endorsed over by the Plumbing Company to the Standard Sanitary?

A. No, sir, I went to the Citizens Bank and had two cashier's checks made, one for \$13,000 and one for \$1,000.

Q. Taken to the bank by yourself?

A. Yes.

Q. And you took in place thereof a check for \$13,000 to the Standard Sanitary Company and a check for \$1,000 to the Phoenix Plumbing [519] & Heating Company? A. Yes.

Q. So that \$13,000 never went through the books of the Phoenix Plumbing and Heating Company?

A. It had to go through the books.

Q. You took the check?

A. It went through the books?

Q. Then your books showed a credit of \$1,000 you received?

A. We had to show it to the credit of the Lincoln Mortgage Company to settle their account.

Q. And the Lincoln Mortgage Company account was assigned to the Standard Sanitary in March? A. So I understand."

Also the testimony of Leo Francis, Vol. 1, Transcript, beginning at the top of page 172 and ending at page 173):

"Q. In your testimony yesterday you were asked about the Lincoln Mortgage Company claim; isn't it a fact that you gave the Standard Sanitary Manufacturing Company an

order on the Lincoln Mortgage Company for all the money due on March 5th?

A. Dee gave them.

Q. But you knew about it?

A. Yes, I had heard them talk of it.

Q. It was agreeable to you that they should be given? A. Yes.

Q. It was given on March 5th?

A. I couldn't say; it was in 1928.

Q. I hand you Respondents' Exhibit "C" for Identification and will ask if you ever say that before?

(Witness examines paper.)

A. I would not say that I have seen it; but I talked with Mr. Bowers about it.

Q. You knew we had it? A. Yes.

Q. The Lincoln Mortgage Company accepted it? [520] A. Yes.

Q. So that your interest in that amount of money ended there?

A. It was to apply on our account.

Q. So the truth of it was that in March, 1929, your books showed a debt of \$45,000 reduced by the amount of that assignment, so far as the Standard Sanitary Company was concerned?

A. They gave us credit when they collected that \$13,000.

Q. Your account was secured to that extent on the 5th of March and it increased your purchasing power to that extent, didn't it? It was their money from the time you turned that order over to them, wasn't it? A. Yes.

Q. The Phoenix Plumbing & Heating Company did not receive any money from the Lincoln Mortgage Company in June?

A. It was paid direct to the Standard Sanitary Company.

Q. On the 5th of March we all knew how much money was coming to you on that job?

A. Yes.

Q. And you knew how much of the Standard material you were going to need to finish it, didn't you? A. Yes.

Q. And in March it was collected, wasn't it?

A. You mean, the Lincoln Mortgage Company?

Q. Yes. A. Yes.

Q. When you gave this order to the Standard Sanitary, the work you were doing for the Lincoln Mortgage Company was pretty well cleaned up, wasn't it? A. Yes.

Q. There was only a little more labor and material to go in there?

A. Before that payment we done some work on some of the other jobs.

Q. That was labor, wasn't it? [521]

A. Yes."

Also testimony of D. L. Francis contained in Volume 2 of the Transcript, page 329, to the effect which is as follows: (The testimony is in regard to Respondents' Exhibit "C" filed herein.)

"Q. I call your attention to Respondents' Exhibit 'C' for Identification; have you ever seen that before? A. Yes, sir.

Q. Did you sign that? A. Yes.

Q. And delivered it to the Standard Sanitary Company? A. Yes.

Q. On the 5th of March? A. Yes.”

ASSIGNMENT OF ERROR No. 2.

The Court erred in overruling the objections of the Standard Sanitary Manufacturing Company to that portion of the Special Master's report contained in subdivision 4 of the conclusions of law of the said Special Master's report, which is in words and figures as follows, to wit:

“4. That the said alleged bankrupts and each of them did, on or about June 10th, 1929, and within four months next preceding the date of filing of the involuntary petition herein, commit a further act of bankruptcy by transferring and paying over, while insolvent, to Standard Sanitary Manufacturing Company, a corporation, the sum of Thirteen Thousand (\$13,000.00) Dollars in money.”

for the following reasons:

“(1) That it affirmatively appears by the evidence in the case that the said \$13,000.00 was assigned to the Standard Sanitary Manufacturing Company by the Phoenix Plumbing and Heating Company and the Lincoln Mortgage Company accepted such assignment on the 5th day of March, 1929, and that thereafter the Phoenix Plumbing and Heating Company had no control, [522] interest or right in the said \$13,000.00 and that the same was not trans-

ferred and paid over by the Phoenix Plumbing and Heating Company while insolvent on or about the 10th day of June, 1929.

“(2) Because it affirmatively appears by the testimony of D. L. Francis (Rep. Trans. Vol. 2, p. 329) and by the evidence of Fryberger (Rep. Trans. Vol. 3, pp. 391-392) and by Respondent’s Exhibit ‘C’ in evidence, that full and complete title to the said \$13,000.00 passed to the Standard Sanitary Manufacturing Company on the 5th day of March, 1929, and that there does not appear in the evidence, findings of fact or conclusions of law any proof that the Phoenix Plumbing and Heating Company was not a solvent, going concern on the 5th day of March, 1929.”

ASSIGNMENT OF ERROR No. 3.

The Court erred in overruling the objections of the Standard Sanitary Manufacturing Company to that portion of the Findings of Fact of the Special Master’s Report contained in subdivision 5 of said Special Master’s Report, which is in words and figures as follows:

“3. That said Phoenix Plumbing and Heating Company, a co-partnership, composed of Leo Francis, Lyon Francis and D. L. Francis, was at the date of filing of the petition herein, now is, and has been for more than four months next preceding the date of filing of the petition herein, insolvent.”

for the reasons:

“(1) That no where in the evidence upon which the said Master’s Report, Findings of Fact and Conclusions of Law are based does there appear any proof of insolvency prior to the 20th day of July, 1929, but that in truth and in fact the evidence contained in the Reporter’s Transcript shows conclusively that at all times up to and including the 22nd day of June, 1929, the Phoenix Plumbing and Heating Company was a solvent, going concern and was so treated by all of its creditors, including the petitioning creditors herein, and that upon all the evidence the findings of insolvency should have been the 20th day of July, 1929.”

“(2) That the evidence of Jerry Lee, the auditor who testified in this case did not reveal insolvency on the part of these alleged bankrupts until the 30th day of April, 1929, as shown by the statement of assets and liabilities compiled by the said Jerry Lee and admitted in evidence as petitioning creditors’ Exhibit No. 25, and for the further reason that the [523] examination of the said Jerry Lee upon the said statement of assets and liabilities contained in Volume III of the Transcript of Evidence, page 400 to 523 revealed that the said statement is not a fair, equitable and just statement of the assets and liabilities of the said alleged bankrupt.”

WHEREFORE, these defendants pray that said judgment overruling the objections of the Standard

Sanitary Manufacturing Company, a corporation, to the Master's Report in so much thereof as declares the payment of the \$13,000.00 received from Lincoln Mortgage Company to the Standard Sanitary Manufacturing Company, a corporation, by the said Phoenix Plumbing and Heating Company, a corporation, be reversed, and that the costs accrued and to accrue be awarded this petitioner.

ARMSTRONG, LEWIS & KRAMER,
Attorneys for Standard Sanitary Manufacturing
Company, a Corporation, Objecting Creditor.

Filed Jun. 25, 1930. [524]

[Title of Court and Cause.]

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:
That we, Standard Sanitary Manufacturing Company of Pittsburgh, Pennsylvania, a corporation, as principal, and the United States Fidelity & Guaranty Company of Baltimore, Maryland, a corporation, as surety, are held and firmly bound unto Mommens-Dunnegan-Ryan Company, a corporation, Pratt-Gilbert Hardware Company, a corporation, and Union Oil Company of Arizona, a corporation, and the Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis, and D. L. Francis, co-partners, and D. L. Francis, Leo Francis and Lyon Francis as individuals, and William L. Hart, Trustee [525] in Bankruptcy of the Phoenix Plumbing and Heating Company, a co-partnership composed of Leo

Francis, Lyon Francis and D. L. Francis, co-partners, bankrupts, in the sum of Fifteen Hundred (\$1500) Dollars for the payment of which well and truly to be made, we and each of us bind ourselves, our successors and assigns, jointly and severally by these presents.

Signed and dated this 25th day of June, 1930.

WHEREAS, lately at a regular term of the District Court of the United States for the District of Arizona, sitting at Phoenix, Arizona, in said District, in a suit pending in said court between Momsen-Dunnegan-Ryan Company, a corporation, Pratt-Gilbert Hardware Company, a corporation, and Union Oil Company of Arizona, a corporation, Petitioning Creditors, against Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis, and D. L. Francis, co-partners, and D. L. Francis, Leo Francis and Lyon Francis as individuals, in which the Standard Sanitary Manufacturing Company, a corporation and Crane Company, a corporation, were Objecting Creditors, cause No. B.-522—Phoenix on the bankruptcy docket of said court, final judgment was rendered against the Standard Sanitary Manufacturing Company, a corporation, overruling its objections to the affirming of the Special Master's report by the said District Court, and adjudging that the said Phoenix Plumbing and Heating, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners and as individuals, were bankrupt, and in which it was adjudged that the Standard Sanitary Manufacturing

Company, a corporation, pay the costs of suit as taxed in the sum of Five Hundred Thirty-two (\$532) Dollars, and the said Standard Sanitary Manufacturing Company has appealed from the said judgment and obtained an order from this Honorable Court allowing said appeal [526] and filed a copy thereof in the office of the Clerk of said court, seeking to reverse the said adjudication in bankruptcy, or so much thereof as is affected by the objections of the said Standard Sanitary Manufacturing Company in the said suit, and a citation directed to the said Momsen-Dunnegan-Ryan Company, a corporation, Pratt-Gilbert Hardware Company, a corporation, and Union Oil Company, of Arizona, a corporation, Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners and as individuals, Crane Company, a corporation, Objecting Creditor, citing them to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be held at San Francisco in the State of California, according to law, within thirty (30) days from the date hereof.

NOW, THE CONDITION OF THE ABOVE OBLIGATION is such that if the said Standard Sanitary Manufacturing Company, a corporation, shall prosecute its appeal to effect and pay all costs if it fail upon its said appeal, then this obligation to

be null and void; otherwise to remain in full force and virtue.

STANDARD SANITARY MANUFACTURING COMPANY OF PENNSYLVANIA, a Corporation,

By J. L. NIELL,

Its Agent,

Principal.

UNITED STATES FIDELITY AND GUARANTY COMPANY OF BALTIMORE, MARYLAND,

By VERLAND W. HALDIMAN,

Atty-in-fact,

Surety.

Approved this the 26th day of June, A. D. 1930.

F. C. JACOBS,

Judge. [527]

State of Arizona,

County of Maricopa,—ss.

I, C. R. McFall, Clerk of the United States District Court for the District of Arizona, do hereby certify that United States Fidelity & Deposit Company of Baltimore, Maryland, whose name appears as a surety to the above and foregoing bond, is in my opinion good and ample security for the amount therein specified, and it is authorized to do business in the County of Maricopa, State of Arizona, and has property subject to execution, in excess of the amount of said bond, and if the bond is presented to me for approval the same will be accepted and approved.

WITNESS my hand and seal of office this the
— day of June, A. D. 1930.

_____,
Clerk.

Filed this the — day of June, A. D. 1930.

Filed Jun. 26, 1930. [528]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the District Court of the United
States at Phoenix, Arizona:

In the matter of the appeal of the above-entitled
cause, please prepare and certify for the transcript
of record, copies of the following instruments and
papers on file in your office:

1. Petition for involuntary bankruptcy of petitioning creditors.
2. Answer to petition for involuntary bankruptcy of Standard Sanitary Manufacturing Company. [529]
3. Special Master's report.
4. Exceptions of Standard Sanitary Manufacturing Company to Special Master's report.
5. Respondents' Exhibit "C" in Evidence, being original assignment of Lincoln Mortgage Company's account by Phoenix Plumbing and Heating Company to Standard Sanitary Manufacturing Company.
6. Judgment overruling exceptions of Standard Sanitary Manufacturing Company and order of adjudication in bankruptcy.

7. Memorandum of costs and disbursements of petitioning creditors.
8. Objections to memorandum of costs and disbursements of petitioning creditors.
9. Taxation of costs by the Clerk.
10. Appeal to District Court from Clerk's taxation.
11. Judgment settling costs by the District Court.
12. Statement of evidence pertaining to Lincoln Mortgage Company transaction with Phoenix Plumbing and Heating Company and Standard Sanitary Manufacturing Company and date of insolvency.
13. Assignments of error.
14. Petition for appeal.
15. Citation on appeal.
16. Cost bond on appeal.
17. This praecipe to Clerk.
18. Clerk's certificate.

ARMSTRONG, LEWIS & KRAMER,
Attorneys for Objecting Creditor Standard Sanitary Manufacturing Company.

Filed Jun. 26, 1930. [530]

[Title of Court and Cause.]

COUNTER-PRAECIPE OF PETITIONING
CREDITORS AND APPELLEES FOR
TRANSCRIPT OF RECORD.

To the Clerk of the District Court of the United
States, for the District of Arizona:

In addition to the pleadings, proceedings and papers requested to be included in the transcript of record on appeal in the above cause by the praecipe for transcript, filed herein, by objecting creditor, the Standard Sanitary Manufacturing Company, you will please include in said transcript the following papers, to wit: [531]

1. Order of reference to the Special Master.
2. Application for order of transmittal of original exhibits.
3. Order for transmittal of original exhibits.
4. Petitioning creditors' original exhibits, numbers 5, 14 and 16, in evidence.
5. Statement of all evidence before Special Master, including all exhibits.
6. Order approving statement of evidence.

Dated this 3d day of July, 1930.

ALICE M. BIRDSALL,

Attorney for Momsen-Dunnegan-Ryan Company, a Corporation, Pratt-Gilbert Hardware Company, a Corporation, and Union Oil Company of Arizona, a Corporation, Petitioning Creditors and Appellees.

Received copy of the within counter-praecipe, this 3d day of July, 1930.

ARMSTRONG, LEWIS & KRAMER,

Attorney for Objecting Creditor and Appellant.

Attorney for Trustee in Bankruptcy. [532]

Filed Jul. 3, 1930. [533]

[Title of Court and Cause.]

COUNTER-PRAECIPE OF TRUSTEE IN
BANKRUPTCY FOR TRANSCRIPT OF
RECORD.

To the Clerk of the District Court of the United
States, for the District of Arizona:

In addition to the pleadings, proceedings and
papers requested to be included in the transcript
of record on appeal in the above cause by the prae-
cipe for transcript, filed herein, by objecting cred-
itor, the Standard Sanitary Manufacturing Com-
pany, you will please include in said transcript, the
following papers, to wit: [534]

1. Order of reference to the Special Master.
2. Application for order of transmittal of origi-
nal exhibits.
3. Order for transmittal of original exhibits.
4. Petitioning creditors' original exhibits, Num-
bers 5, 14 and 16, in evidence.
5. Statement of all evidence before Special Mas-
ter, including all exhibits.
6. Order approving statement of evidence.

Dated this 5th day of July, 1930.

THOMAS W. NEALON,

Attorney for Trustee in Bankruptcy, William L.
Hart.

Received copy of the within counter-praeceipe, this 5th day of July, 1930.

ARMSTRONG, LEWIS & KRAMER,
Attorneys for Objecting Creditor and Appellant.

ALICE M. BIRDSALL,
Attorney for Petitioning Creditors and Appellee.

Filed Jul. 5, 1930. [535]

[Title of Court and Cause.]

APPLICATION FOR ORDER FOR TRANSMITTAL OF ORIGINAL EXHIBITS.

Come now Momsen-Dunnegan-Ryan Company, a corporation, Pratt-Gilbert Hardware Company, a corporation, and Union Oil Company of Arizona, a corporation, petitioning creditors and appellees, by their attorney, Alice M. Birdsall, and make this application to the court for an order, directing the transmittal of Petitioning Creditors' Exhibits Numbers 5, 14 and 16, introduced in evidence at the hearing before the Special Master, on the petition in involuntary bankruptcy, filed herein, and the answers of objecting creditors, and of D. L. Francis and [536] Lyon Francis, alleged bankrupts, contesting the adjudication in bankruptcy, in their original form with the transcript of record to the United States Circuit Court of Appeals for the Ninth Circuit without the necessity of making copies thereof.

This application is for the reason that the said exhibits are incapable of being copied, and should

be transmitted to the Appellate Court in their original form, for examination by such court.

WHEREFORE, these applicants pray that an order be made by this Honorable Court, authorizing and directing the transmittal of said exhibits in their original form, with the transcript of record, to the United States Circuit Court of Appeals for the Ninth Circuit, without the necessity of making copies thereof.

ALICE M. BIRDSALL,

Attorney for Momsen-Dunnegan-Ryan Company, a Corporation, Pratt-Gilbert Hardware Company, a Corporation, and Union Oil Company of Arizona, a Corporation, Petitioning Creditors and Appellees.

Received copy of the within this 10th day of July, 1930.

ARMSTRONG, LEWIS and KRAMER,
Attorneys for Standard Sanitary Manufacturing Company.

THOMAS W. NEALON,
Attorney for Trustee.

Filed Jul. 17, 1930. [537]

April, 1930, Term—Thursday, July 17, 1930—At
Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT—JULY 17, 1930—OR-
DER ENLARGING TIME TO AND IN-
CLUDING SEPTEMBER 25, 1930, TO FILE
RECORD AND DOCKET CAUSE.

Upon the petition heretofore filed for the Stan-
dard Sanitary Manufacturing Company, a corpora-
tion, appellant herein, it appearing to the court that
it will be physically impossible to complete the
record on or before the 25th day of July, 1930,
because of the number of exhibits and the testimony
involved in the case,—

IT IS HEREBY ORDERED that the time for
filing the record and *docket* the above-entitled
cause be and the same hereby is enlarged to and
including the 25th day of September, 1930.

Done in open court this 17th day of July, 1930.

F. C. JACOBS,
Judge. [538]

April, 1930, Term—Thursday, August 14, 1930—At
Prescott.

MINUTES OF COURT—AUGUST 14, 1930—
ORDER EXTENDING TIME TO AND IN-
CLUDING DECEMBER 15, 1930, TO FILE
RECORD AND DOCKET CAUSE.

It appearing to the court that the parties hereto have agreed and stipulated that the time for filing a record in the above-entitled case be extended from the 25th day of September to and including the 15th day of December, '30,—

IT IS ORDERED that the time for filing the record and *docket* the above-entitled cause in the Circuit Court of Appeals of the 9th District be and the same is hereby extended to and including the 15th day of December, 1930.

Dated this 14th day of August, 1930.

F. C. JACOBS,
Judge. [539]

October, 1930, Term—Friday, December 12, 1930—
At Phoenix.

MINUTES OF COURT—DECEMBER 12, 1930—
ORDER EXTENDING TIME TO AND IN-
CLUDING FEBRUARY 15, 1931, TO FILE
RECORD AND DOCKET CAUSE.

It appearing to the court that the parties hereto have agreed and stipulated that the time for filing the record in the above-entitled cause be extended

from the 15th day of December, 1930, to and including the 15th day of February, 1931,—

IT IS ORDERED that the time for filing the record and docketing the above-entitled cause in the Circuit Court of Appeals of the Ninth District be and the same hereby is extended to and including the 15th day of February, 1931.

Dated this 12th day of December, 1930.

F. C. JACOBS,
Judge. [540]

October, 1930, Term—Monday, February 16, 1931—
At Phoenix.

MINUTES OF COURT—FEBRUARY 16, 1931—
ORDER EXTENDING TIME TO AND INCLUDING MARCH 16, 1931, TO FILE RECORD AND DOCKET CAUSE.

It appearing to the court that the parties hereto have agreed and stipulated that the time for filing the record in the above-entitled cause be extended from the 15th day of February, 1931, to and including the 16th day of March, 1931,—

IT IS ORDERED that the time for filing the record and docketing the above-entitled cause in the Circuit Court of Appeals of the Ninth District be and the same hereby is extended to and including the 16th day of March, 1931.

Dated this 16th day of February, 1931.

F. C. JACOBS,
Judge. [541]

October, 1930, Term—Monday, March 16, 1931—At
Phoenix.

MINUTES OF COURT—MARCH 16, 1931—OR-
DER EXTENDING TIME TO AND IN-
CLUDING MARCH 21, 1931, TO FILE REC-
ORD AND DOCKET CAUSE.

It appearing to the court that a stipulation has been entered into by the parties hereto by which the time for filing the record in the above-entitled case is enlarged to and including the 21st day of March, 1931,—

IT IS ORDERED that the time for filing and docketing the above-entitled cause in the Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including the 21st day of March, 1931.

Dated this 16th day of March, 1931.

F. C. JACOBS,
Judge. [542]

[Title of Court.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Arizona,—ss.

I, J. Lee Baker, Clerk of the United States Dis-
trict Court for the District of Arizona, do hereby
certify that I am the custodian of the records,
papers and files of the said Court, including the

records, papers and files in the matter of Phoenix Plumbing and Heating Company, a co-partnership composed of Leo Francis, Lyon Francis and D. L. Francis, co-partners, and D. L. Francis, Leo Francis and Lyon Francis, as individuals, alleged bankrupts, numbered B.-522—Phoenix on the docket of said court.

I further certify that the attached pages, numbered 1 to 546, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the praecipe and counter-praecipes filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the city of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$87.25 and that said sum has been paid to me by counsel for the appellant.

I further certify that the original citation issued in the said cause is hereto attached and made a part of this record.

WITNESS my hand and the seal of the said court this 21st day of March, 1931.

[Seal]

J. LEE BAKER,
Clerk. [543]

[Title of Court and Cause.]

CITATION ON APPEAL.

To Momsen-Dunnegan-Ryan Company, a Corporation, Pratt-Gilbert Hardware Company, a Corporation, and Union Oil Company of Arizona, a Corporation, and to Alice M. Birdsall, Their Attorney, Phoenix Plumbing and Heating Company, a Co-partnership, and Leo Francis, and O. E. Schupe, Their Attorney, Lyon Francis and D. F. Francis, Alleged Bankrupts, and Their Attorney, E. O. Phlegar; Crane Company, a Corporation, and F. B. Townsend, Its Attorney, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, thirty days from and after the day this citation [544] bears date, pursuant to an appeal heretofore filed in the office of the Clerk of the District Court of the United States for the District of Arizona at Phoenix, wherein Standard Sanitary Manufacturing Company, a corporation, objecting creditor, is appellant, and you and each of you are appellees, to show cause, if any there be, why the judgment rendered against the said Standard Sanitary Manufacturing Company, a corporation, and the judgment of this court overruling the Standard Sanitary Manufacturing Company's objection to the Special Master's Report, and the order of adjudi-

cation in bankruptcy of the Phoenix Plumbing and Heating Company in so far as the same is affected by the said objections should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS the Honorable F. C. JACOBS, Judge of the above-entitled court, this 25th day of June, 1930.

[Seal] F. C. JACOBS,
Judge of the District Court of the United States
for the District of Arizona at Phoenix. [545]

Filed Jun. 25, 1930.

[Endorsed]: No. 6416. United States Circuit Court of Appeals for the Ninth Circuit. Standard Sanitary Manufacturing Company, a Corporation, Appellant, vs. Momsen-Dunnegan-Ryan Company, a Corporation, Pratt-Gilbert Hardware Company, a Corporation, Union Oil Company of Arizona, a Corporation, Phoenix Plumbing and Heating Company, a Co-partnership Composed of Leo Francis, Lyon Francis and D. L. Francis, Co-partners, Leo Francis, Lyon Francis and D. L. Francis, as Individuals, William L. Hart, as Trustee in Bankruptcy of the Phoenix Plumbing and Heating Company, a Co-partnership Composed of Leo Francis, Lyon Francis and D. L. Francis, Co-partners, Bankrupts, and Crane Company, a Corporation, Ap-

vs. Momsen-Dunnegan-Ryan Company et al. 655

pellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Filed March 23, 1931.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

